

## The Death Penalty in Japan: The Law of Silence

Going against the International Trend

International fact-finding mission

Article 1 : All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2 : Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.





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# Introduction

In the framework of its engagement in favour of the universal abolition of the death penalty, FIDH undertakes international fact-finding missions in countries where this inhuman practice is still carried out. These missions have four objectives: (1) to highlight the iniquity of this punishment, one already abolished in law in 91 countries, abolished for all but exceptional crimes, such as crimes committed during wartime, in 11 other countries, and a punishment that, while still legally sanctioned in 35 more countries, has led to no execution for 10 years (de facto abolitionist countries); (2) to show that as a general rule prisoners condemned to death or executed throughout the world do not benefit from fair trials, in the sense given to the term under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), making the sentence even more unacceptable. These missions of enquiry also have as objectives to (3) turn the spotlight on and publicise the living conditions of death row detainees, from the time of conviction to execution. The situation of detainees often amounts in reality to «cruel, inhuman and degrading treatment», prohibited by international human rights law. Finally, (4) in leading such missions of enquiry, FIDH formulates recommendations to authorities in the countries concerned as well as to relevant actors, in a spirit of dialogue and in order to support, to the extent that it is possible, their efforts in favour of the abolition of the death penalty or, at the very least, in support of a moratorium on executions.

This report is the result of an international fact-finding mission to Tokyo from the 25 July to 3 August 2008. A previous enquiry mission on the death penalty had been conducted by FIDH in Tokyo in October 2002, resulting in the publication of a report in May 2003 (see, in annex, the recommendations formulated in this report). The current mission aimed at assessing the extent to which the previous reports'

recommendations have been implemented and at registering the evolution of the death penalty in Japan since the previous enquiry. The mission was composed of three members - Mr. Dan Van Raemdonck, Professor of Linguistics at the University of Brussels and Vice-President of FIDH; Florence Bellivier, Professor of Law at University Paris X-Nanterre and Secretary-General of FIDH, in charge of the question of the death penalty; and Jiazhen Wu, member of the Executive Board of the Taiwan Association For Human Rights, FIDH member organization.

FIDH would like to sincerely thank the Centre for Prisoners' Rights (CPR) for its constant support in the lead up to and during the mission, as well as Forum 90 Calling for Ratification of the Second Optional Protocol to ICCPR, Amnesty International - Japan, and the Japan Federation of Bar Associations (JFBA) for their invaluable contributions.

As in 2002, the cooperation of Japanese authorities afforded to the FIDH mission was not entirely satisfactory. The Minister of Justice did not respond to the mission's meeting request. The mission was only able to meet with senior officials within the Ministry of Justice. These officials indicated to the mission that Japan no longer performs executions only in between Parliamentary sessions or during periods of public and political holidays, a state of play strongly criticised in the previous report, which castigated Japanese authorities for doing all in their power to stifle debate on the subject. With patent cynicism, the officials indicated to the mission that in response to the previous report, executions since 2002 take place regularly throughout the year.

In addition, the Supreme Court refused to meet with the mission, providing instead an assortment of data that he requested be included in the mission report. As the mission members were unable to discuss these figures in any way with the Court, it was decided to not comply with the request. According to a number of anonymous sources in the judiciary, the Supreme Court



was displeased with the previous FIDH report, which the Court believed inaccurately represented past interviews.

The FIDH representatives visited two detention centres: a newly built centre in Tokyo and another in Nagoya. Contrary to the brevity of visits permitted in 2002, those permitted for the current mission each lasted between two and two and a half hours. On each occasion, the FIDH mission was received courteously by the Prison Director and by two or three of his staff. Following a half an hour PowerPoint presentation, almost as an advertisement, the mission members were able to visit empty cells (both individual and collective), without ever being able to enter into contact or communication with the detainees, as well as detention centre infrastructure (kitchens, workshops, exercise areas etc.). While those condemned to death are prohibited from leaving their cell throughout the day (excluding bathing, exercise and visits), they are held in wings with a variety of detainees.

Reticence in the face of publicity is characteristic of Japanese authorities positions vis-a-vis the death penalty, an issue that is made as deliberately opaque as possible. Today, executions are systematically announced in Japanese news after they have taken place. While, in comparison to 2002, the question of the death penalty makes headlines more often, this development springs less from the public questioning of the death penalty than an official effort to prepare public opinion for the judicial reform at-hand concerning the introduction of lay judges in serious cases including death penalty cases. In any case, the conditions of detention of death penalty detainees go largely unnoticed by the public.

The FIDH mission met with approximately 50 individuals:<sup>1</sup> members of the legal profession (JFBA, Japanese Federation of Bar Associations, that represents a total of 19,500 jurists countrywide), judges, a Professor of Law at Aoyama Gakuin University (Mr. Niikura Osamu), journalists, abolitionist groups (Forum 90, Amnesty International - Japan), one pro-death penalty Parliamentarian, Parliamentarians and members of the Diet Members' League for the Abolition of the Death Penalty, and a delegation from the French Embassy given the current French presidency of the European Union. The mission met also with the members of death row prisoners' families, members of civil society, including prison visitors (Soba-no-kai, an anti-death penalty grassroots group), members of the victims' movement in favour of the abolition of the death penalty (Ocean) and a religious pastor working within an ecumenical religious association supporting abolition. Victims' families associations in favour of the death penalty refused to meet with the mission.

The points of view of those met diverged, ranging from support for the total abolition of the death penalty to an intransigent support for the maintenance of the application of the death penalty, passing through those in favour of the possibility of implementing a new replacement punishment, the subject of a recently launched debate within society - life imprisonment without possibility of parole. Putting Japanese society in context is necessary. The toxic gas attacks committed in the Tokyo Underground by the Aum Sect in 1995 remain omnipresent for many. Moreover, while criminality and the number of prisoners in Japan is proportionally lower than in comparable countries,<sup>2</sup> Japan also has had to deal with offence similar to the American Columbine massacre, which, while isolated, attract significant press attention and influence public opinion. At the same

1. See Annex for list of persons met.

2. In France, for example, the number of yearly homicides is slightly lower than 1000, while in Japan, with a population double that of France, witnessed 1190 murders in 2007. This was the lowest rate of homicide since World War Two, according to CPR. As of December 2007, there were 79809 prisoners, being 1.33 per cent times the French equivalent. In December 2006, there were 81255 prisoners, compared to 50897 in 1997. This indicates the rapid increase in detainees over the last ten years, with only one decrease in 1997.

time, examples of a particular social malaise are increasing, with 30,000 suicides in 2007.

After discussing the historical context and the respective position of public opinion and of the authorities concerning the death penalty (1), the report will concentrate on the Japanese and international legal framework (2) and on the legal procedure itself (3), before finally addressing the conditions of prisoners sentenced to death (4).

# I. The Japanese context

## Context and history of the application of the death penalty in Japan

Historically, Japan has a long-held practice of the death penalty, including different forms of execution - strangulation, decapitation and the forced suicide ritual «seppuku». However, over approximately 346 years during the Heian period, between 810 and 1156, no execution took place. The absence of war during this period, as well as the influence of Buddhism and of its compassionate principles are the principal reasons that explain why the death penalty was not applied. Following the Meiji Restoration (1868) and the introduction of a Western-style criminal system, the death penalty was done by hanging. After the Second World War, the occupying powers undertook constitutional and legal reform. With the exception of crimes committed during time of war or crimes concerning the imperial family and adultery, the 1947 Criminal Code remained almost identical to that of 1907. Ever since this time, Japan has maintained the death penalty, aside from a brief *de facto* hiatus between 1989 and 1993.

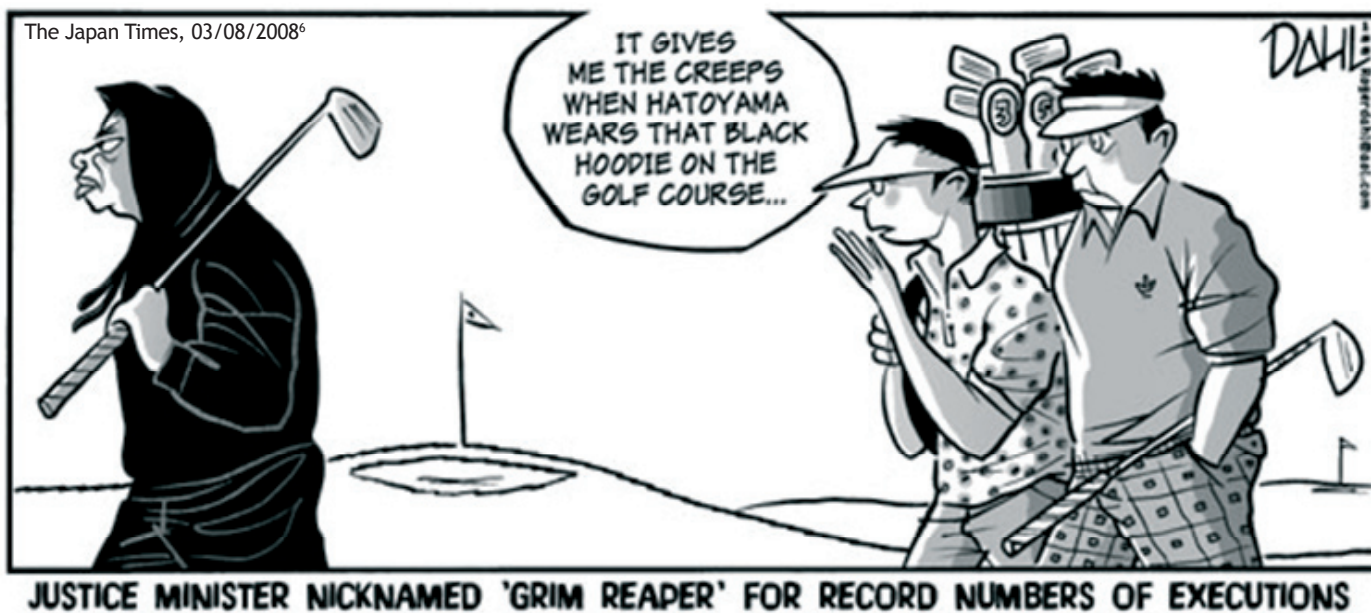
Executions require authorisation from the Minister for Justice; the refusal of the then Minister - personally opposed to the death penalty - to sign such an authorisation between November 1989 and March 1993 resulted in this *de facto* moratorium. This period coincided with the existence in Japan of a strong abolitionist movement. This movement, however, went into decline following the toxic gas attacks carried out on the Japanese Underground by the Aum Sect in 1995. The shock, the number of fatalities and the plight of those who continue to suffer as a consequence of the attacks, as well as the related trials, were a body blow to the abolitionist movement, which as a whole oscillates between maintaining the demand for absolute abolition, calling for a moratorium or even for reaching a compromise with the introduction of a law replacing the death penalty with life imprisonment without parole.

Altogether, Japan's detention centres hold 102 detainees condemned to death. Since 1993, 76 such detainees have been hanged.<sup>3</sup> And the rhythm of executions is only increasing. The three previous Ministers for Justice, each occupying his post for less than one year, ordered the execution of, respectively, zero detainees (Sugiura Seiken), 10 detainees (Nagase Jinen who, while seeming little in favour of executions, clearly felt obliged, stating «I had to...»<sup>4</sup>), and 13 detainees (Hatoyama Kunio). The last-mentioned Minister made it known that he desired judicial reform discharging the Minister for Justice of his responsibilities to assent to all executions and gave *carte blanche* to executions. In addition, he publicly announced his desire to move towards a more flexible timetable of executions, if possible within the six months following the conviction.<sup>5</sup> Such sentiments have earned him a fearsome reputation, provoked a swathe of critical articles, most notably in the *Asahi Shimbun*, which has nicknamed him «the Grim Reaper».

3. See the Table provided in Annex.

4. Older persons are also executed. Two of the three executed on 25 December 2006 were older than 70. One went to the gallows in a wheel chair.

5 Which reflects the delay prescribed by law, although the delay may be prolonged by appeals.



Minister Hatoyama is fully aware of international pressure but insists on Japan's sovereign right to decide its own standards of justice. Two days after the United Nations resolution of 18 December 2007 calling for a universal moratorium on the death penalty, the Minister, aware of the ensuing debate, signed off on the execution of three individuals. Adding to three executions in February, four in April and another three in June, Japan's rate of execution under Minister Hatoyama has risen to three to four executions every two months. Moreover, according to information gathered from Amnesty International, the Minister has misled Parliamentarians of Japan's lower house, claiming that the 27 European Union ambassadors with which he had met had expressed «understanding» of Japan's stance on this issue.

Mr Hatoyama's successor, Mr Yasuoka Okiharu, former judge and lawyer, already having occupied the post as Minister of Justice from 2000 to 2001, let it be known, the day following his nomination, that he did not support the abolition of the death penalty, because «we must respect the wishes of the population who share the opinion that [the most heinous crimes]

must be sanctioned solely by the death penalty». In addition, having only occupied the post of head of Japan's Justice Ministry for one month, in the context of the moribund Fukuda premiership<sup>7</sup> and an uncertain future for Japanese governance, the Minister instructed a further three executions on 11 September 2008, stating «I have done my duty as the Minister of Justice». The NGO Forum 90 declared that «in only one month in position, the Minister would certainly not have had time to seriously examine the files of the three condemned to death, which shows his negligence of his responsibilities as Minister».

However, under pressure from the international community and civil society, the debate is emerging on the legitimacy of capital punishment, notwithstanding the difficulty to raise the issue among public opinion.

### Actors

According to «regular» Governmental surveys (supposedly undertaken every year, but more commonly every five years, following the commission of particularly heinous crimes), Japanese public

6. The Japan Times is mostly read by non-Japanese readers, and does not represent the editorial line of most Japanese newspapers as regards the death penalty, which rather reflect victims families' opinion.

7. As was the case at the moment of writing. Prime Minister Fukuda Yasuo resigned on 1 September, raising the spectre of much-anticipated elections.

opinion remains strongly favourable to the death penalty. In 1999, the survey indicated that 72.9% of the people surveyed were supporting capital punishment; in 2004, this number had risen to 81.4%.<sup>8</sup> Yet numerous criticisms point to the systematically biased character of the questions posed. For example, the choice is between (1) the death penalty must be abolished, in every case; (2) the death penalty is indispensable and cannot be avoided in certain cases; (3) I don't know, I can't decide".<sup>9</sup> According to Professor Dando,<sup>10</sup> even if the questionnaires improve in response to criticisms, the survey will very likely continue with tendential questions favouring the retentionist cause. Forum 90 supported this assessment in its 1998 Alternative Report relative to the Periodic Report of Japan before the United Nations Human Rights Committee. A closer study of the survey, nonetheless, unmasks alternative realities. For example, Japan's student population is opposed to capital punishment, according to Fukushima Mizuho, of the PSD (assertion confirmed by a Professor of Law met by the mission, Niikura Osamu). In general, the level of information on public opinion concerning the death penalty is rather limited. It seems, for example, that the majority of Japanese believe the majority of countries worldwide practice the death penalty.

Contemporary points of view on the death penalty and its abolition, at least those brought to the knowledge of the mission members, are complex and often reflect heavily intertwined subjects and factors, notably:

- the role of media in the formation and the perception of the public opinion
- the importance of cultural beliefs concerning death and the related principle that one must take responsibility for one's own actions;
- the lasting impact on public opinion of the

deadly gas attack of the Aum Sect in 1995 and the Matsumoto Sarin Gas Attack 1994. (One victim of the Matsumoto gas attack died soon after the end of the mission, making news countrywide);

- the impact on public opinion and on the judicial system of reforms implementing the equivalent of the jury, as well as the position afforded to the victims before the Prosecutor throughout legal proceedings;
- the impact on public opinion of calls emanating from victims' association, which demand that their rights are recognised and respected, and confusion created between these rights, on the one hand, and the application of the death penalty, on the other;
- the impact on national debates of pressure exerted at the international level, notably the warning of the Council of Europe that it would suspend Japan's observer status as a consequence of the country's maintenance of the death penalty - A warning that, although made in June 2001, remains until this day unperformed, weakening the impact of such international pressure.

Partisans of the death penalty presented a recurring «cultural» argument to the mission members, claiming that the fact of «giving death when one has killed», ie that putting to death an individual is the only and sincerest form of expiation, and is deeply rooted in Japanese culture. Government officials and one Parliamentarian also expounded this view, as well as media covering the cases of those put to death. The cultural argument can also be found in Japanese Governmental reports delivered to the United Nations Human Rights Committee, under that country's obligations under the International Covenant on Civil and Political Rights. At the same time, as was underlined by others met by the mission, including NGOs and academics, Japan is also home to a tradition of religious plurality, englobing the teachings of compassion, of forgiveness and of respect for life, through both Buddhism and, more recently, Christianity.

8. See below for a detailed study of the results.

9. See Nagai Jin (2007-2008), « The death penalty - The current status in Japan. Gratuitous appeals to 'Japanese Culture' », in *Japanesia Review* n° 4, p. 68-74.

10. Dando S. (2000) *Towards the abolition of the Death Penalty*, Yuhikaku, Tokyo, Japan.



## Authorities

### Officials from the Ministry of Justice

The mission was received by high-ranking officials from the Ministry of Justice. They made reference to a perceived error in the 2003 report (the officials were most unimpressed with the report's reference to the manner in which the death penalty is a practice «unworthy of a democracy», which was the title of the FIDH report), they proceeded to give to the mission of theoretical lesson on the workings of a democratic state, workings said to be exemplified in every respect by the Japanese Government.

The officials recognize the unique responsibility of the Ministry of Justice for the confirmation of death. Before the condemnation, the cases are in the hands of the judiciary while post-conviction, it falls to the Ministry to carry out the decision of Justice. The cases are purportedly meticulously re-examined on several occasions and independently of applications for retrial or for clemency, according to the chronological order of the confirmation of death.<sup>11</sup> Upon being re-examined, which may also be performed upon the Minister's request, the Minister must sign the execution order, and execution should then be carried out within 5 days. Retrial, appearing perhaps unnecessary to officials with an almost infallible confidence in the legal system and its judges, concerned principally the mental state of the detainee. Mentally disabled detainees are generally not executed, even if it may happen (see the example of Tsutomu Miayzaki or Seiha Fujima, who was executed in Dec. 2007); indeed, priority is even given to the execution of those detainees who appear physically and mentally fit. While the officials spoke of daily health inspections, such assertions contradict the entirety of the mission's other interviews.

Officials responded to questions concerning mandatory appeals and the mandatory suspension of the capital process in the case of a request for retrial or clemency. There exists no written rule on this subject and although possible, executions are usually not performed. In response to the question of whether the Government could introduce new legislation providing for mandatory appeals as well as mandatory suspension following a request to retrial or clemency, the mission received no response.

The officials note in their favour that since 2006, all individuals charged with offences that carry the death penalty as punishment may have access to a court-allocated lawyer before being charged. Concerning the introduction of a lay judge system, the officials claimed to understand the mission's concerns relating to lay judges' potential poor legal comprehension and the related need to provide adequate training, in cooperation with Japan Bar Associations and the Supreme Court.

### Detention centre personnel

The mission was able to visit detention centres in Tokyo and Nagoya (see below, detention conditions). The well-disciplined personnel offered no criticism of the system in place. Theoretical and up to date information was provided during visits to the detention centres, visits that were nonetheless restricted to unoccupied areas.

Detention centres are not overcrowded. The construction of the new Tokyo centre allowed authorities to solve the problem of overcrowding and a similar problem has now been resolved in Nagoya. The mission members wish to highlight the cooperation provided by centre directors and their staff. However, in strict conformity with the policy of secrecy

11. Facts do not, however, reflect this. One person executed on 11 September 2008, Yamamoto Mineteru, was only sentenced definitively in April 2006. The Minister for Justice did not allow Mineteru's lawyers much time to prepare requests for retrial or appeal.

surrounding the death penalty, it was not possible to see, nor even to establish the location of execution chambers. The living conditions in prisons have slightly improved (cells are a little broader in Tokyo than in Nagoya, but they remain nonetheless narrow, taking into account that the official calculation of cell size takes into account the thickness of the walls).

In what amounts to further improvements in 2002, each detention centre now includes a Board of Inspectors, established and entered into force in 2006. These «prison watchdogs», with the authority to visit detention centres, are mandatorily composed of a lawyer and a doctor, and, optionally, a professor of criminal law, officials from municipal Government, or representative of local community. Since 2007, a law passed concerning the status of detainees and of their rights, notably concerning the question of visits, seems to have brought transparency to the previously unwritten rules which saw visits depend on the goodwill of the Prison Director. As a consequence of the 2007 reform, the powers of the Prison Director are now better defined, limiting his discretionary powers. That said, a number of issues relating to the daily life of prisoners remain solely in his or her power.

The two previously mentioned improvements are important to the detainees, yet there was a notable lack of publicity surrounding their introduction. As a consequence, awareness of the new rules and rights is low and individuals and families of detainees have benefited little in practice. Moreover, in response to the question of whether the personnel felt well trained and psychologically supported in dealing with those condemned to death, the response was in the negative; FIDH believes that psychological supervision of centre watchmen would be relevant.

### **Political parties**

The FIDH mission met with several Parliamentarians: one in favour of the death penalty, another opposed, and the General Secretary of Diet Members' League

### **for Abolition of the Death Penalty**

Mr Hirasawa Katsuei, Parliamentarian belonging to one of the ruling parties and a former member of Japanese security forces, resolutely supports the death penalty. This strident position results from its perceived popularity: Mr Hirasawa relies on the results from official surveys, and makes reference to the rights of victims and to his electors who, in his eyes, elected him on the platform of upholding the death sentence. When questioned on how he could be sure of this assertion, given that the question of the death penalty is rarely raised in the framework of election campaigns, Mr Hirasawa did not respond.

Mr Hirasawa remarked that life imprisonment (said to be of indeterminate duration, and the most severe penalty after that of capital punishment) lasts on average only 25 years. He consequently stated his resolve that this punishment must be increased in severity and a new punishment is required: life imprisonment without possibility of parole. The Parliamentarian concerned forms the core of the Parliamentary group working on the implementation of this new punishment. In addition, a new bill drafted by the League includes neither abolition, nor moratorium but life imprisonment without parole, along with unanimous verdict in death penalty cases. Certain persons see in such a proposal of legal reform the opportunity to reduce Japan's recourse to state-sanctioned execution. Mr Hirasawa expressed his support for eliminating the secrecy surrounding capital punishment.

Ms Fukushima Mizuho is a member of the upper house and President of the Social Democratic Party. Ms Mizuho supports the abolition of the death penalty but indicates that this task will be more difficult now than it ever has been. Certain media-sensationalised cases charge the Japanese public atmosphere with emotion and irrationality and reduce the scope for advances. As a consequence of her pro- abolitionist stance, Ms Mizuho, is regularly insulted. Her hopes lie in the change of the upper house majority since

2007, which could pave the way for the introduction of a vote seeking to establish a moratorium on executions.

Mr Hosaka Nobuto is the Secretary General of the Diet Members' League for the Abolition of the Death Penalty, a group comprising 70 members. This association is, unfortunately, deliberately secretive. Only eight to 10 members dare to publicize their membership, such is the sensitivity of the death penalty issue in the electorate. The League's President is Kamei Shizuka, elected 10 times by the Japanese people and so who has no need to fear for his position. For 12 years, the electoral system having changed, each district now elects only one member as its own member for each of the upper and lower house. Fearful of a public backlash, many politicians do not dare to make public their stance on sensitive issues. It must be noted that, according to Professor Niikura, the death penalty is not an election topic and if it does make headlines, it does so only to discredit the abolitionists (Professor Niikura cites here the infamous case of Yamagushi district where, despite the opprobrium heaped upon him, the abolitionist candidate won the election).

According to Mr Hosaka, the new lay judges system and the introduction of victims' families in close proximity to the Prosecutor will result in increasing the number of condemnations to death to 100 every year, and between now and five years time, the number of executions itself will rise to 100 per year as well. Hosaka speaks also in favour of the introduction of legislation introducing a moratorium on the death penalty: in his eyes, change to the constituency of the upper house and potential positive changes resulting from upcoming elections in the lower house (at the latest, in September 2009<sup>12</sup>), must be taken advantage of. In addition, he promotes the idea of a moratorium on the entry into force of the laws on a civil jury and concerning victims' families. In contradiction to the principle of separation of powers, it seems that the Japanese Parliament has not made

public all necessary information concerning reforms and that the conditions in which the preliminary phases unfolded, conditions regulated by the Supreme Court, sparked opposition from certain Parliamentarians speaking in defence of the separation of powers (see below, separation of powers).

According to the Parliamentarians questioned, there are three possible positions surrounding the abolition of the death penalty: total abolition, total abolition replaced by lifelong imprisonment without parole, or the introduction of a moratorium on executions combined with a penalty to life imprisonment without parole. However, although this last option is considered by many to be the most feasible, given the existing political structures and alliances, another of those interrogated disagreed markedly on the chance of such a law's success.

## Civil society

### Lawyers

The FIDH mission met with members of the Moratorium Implementation Committee of the Japan Federation of Bar Associations (JFBA), the three Tokyo based bars and local bars. Among the lawyers interviewed were a number particularly involved in cases afoot involving capital punishment. These lawyers expressed their concerns with the following issues: limited access to their clients, limited guarantees to a fair trial and the disequilibrium between the legal representation available to the opposing parties. A number of lawyers considered that the official Japanese Government position goes against the international movement towards abolition. These lawyers affirmed that the death penalty and the totality of legal proceedings are, in and of themselves, cruel considering detention conditions, the prevalent shroud of secrecy and the arbitrariness which governs the execution timetable.

12. As of consequence of the resignation, 1 September, of Prime Minister Fukuda Yasuo.

However, according to the JFBA, there exists no nationwide consensus on the question of the death penalty among its 20,000 professional members. In a survey organized in 1993 by JFBA, 37% of lawyers favoured unconditional abolition and 64% were supporting conditional abolition. The survey organized by the Nagoya Bar reveals a majority in favour of abolition under certain conditions. In 2002, the JFBA adopted a resolution calling for a moratorium on those executions resulting from unfair trials. Since FIDH's 2002 mission, the JFBA has reworked and republished proposed legislation for the implementation of a moratorium. This proposal has been submitted to certain Parliamentarians. An awareness-raising campaign is supposed to start soon. Those with whom the mission spoke have also indicated that lawyers require improved access to information, most particularly the information concerning international human rights standards relevant to death penalty trials. They explained to the mission the concerns that bars have thus far brought to the attention of the Japanese Government, in particular the Governmental secrecy that prevents knowledge of the execution chamber's whereabouts. Not just limited to the execution chambers, the deliberate pall of secrecy surrounding the entire capital punishment issue is a motivating factor in the bars' works.

JFBA members did, nonetheless, recognize recent and minimal legislative improvements over the past years (in particular, the 2006 law concerning detainees' rights established board of visitors and was revised and renamed in 2007 in order to include provisions for death row inmates and pretrial inmates), while recognising at the same time the limited impact of such progress on the condemned themselves.

On the condition of anonymity, several judges shared their concerns with the mission. Contrary to the opinion of Parliamentarian Hirasawa, which stated that

citizens have more confidence in the justice system than in the political, resulting largely from numerous corruption scandals that have shaken the country, the judges met spoke of the lack of interest in the judicial sphere of most citizens (except when citizens have been directly involved in a case). The judges denounced the inordinate power of the Prosecution as well as the subservience of certain Prosecutors and judges (including those belonging to the Supreme Court), who are more or less named or promoted by the executive branch. «Glass ceiling», «invisible harassment», «rampant intimidation» were all evoked to characterise the delivery of Japanese justice. If a particular judge delivers no capital sentence, he or she would have little chance of being promoted. The issue is not of always having to sentence to death, but of making sure it remains an option, which suggests that the case may not be judged entirely on its merits but on the basis of the number of capital sentences pronounced in preceding weeks. Therefore, the refusal of the Supreme Court to meet with the mission may be interpreted as a refusal to displease Government and members of the Ministry of Justice.

#### **Victims' families and detainees' families**

FIDH's 2002 mission met with representatives of an association for the defence of victims' rights, the National Association of Crime Victims and Surviving Families (NACVS), formed in 2000. The NACVS is a National Federation grouping several small victims' associations working to lobby in favour of victim compensation as well as in favour of the right of victims to participate in trials of the accused. The National Association refused to meet with the current follow-up mission.<sup>13</sup> They did not express any reason why they refused the mission's request. It was just after Asahi had described Hatoyama as "Grim Reaper", which they disapproved.

13. During FIDH's 2002 mission, at a long meeting with victims' families, the latter expressed a strong need to continue to be considered as victims by the judiciary. They complained that detainees on death row lived in overly agreeable conditions and criticised the plan for victim indemnity. The mission noted the families' desire for revenge, their demands to see the guilty punished. All families met expressed their willingness to "personally push to button" of execution. The mission noted that while Japanese human rights NGOs were well aware of the ICCPR, the same could not be said of families. Victims' families had posed questions on international law and its relationship to domestic law.



The mission was able to meet with Harada Masaharu, president of Ocean, an association including victims' and detainees' families, working for the abolition of the death penalty. Mr Harada is the brother of Harada Akio, assassinated in 1983 at work over an issue concerning life insurance. The killer, convicted in 1993, sought contact with Harada Masaharu with the goal of seeking forgiveness. Mr Harada continually refused any meeting right up until the confirmation of capital punishment, punishment that he himself had requested. After the capital sentence was announced, Mr Harada agreed to meet with his brother's killer (a total of four times), meetings which affected a change in his opinion on capital punishment: he is henceforth one of Japan's most fervent defenders of its abolition. On two occasions, Mr Harada had asked for clemency for the killer, who was nonetheless executed in 2001. Harada Masaharu published a book in 2004, entitled «The Assassin Who Killed My Brother and I», which retells his life and his relationship with the killer. The publication generated much publicity, being the first of its kind. Mr Harada then militated for the creation of Ocean, which seeks to reunite the families of victims and of detainees, following the model of the American Association of Murder Victims' Families for Human Rights. Compounding the fact that he believes all humans, including criminals, have the right to life, Harada's motivation derives less from the human rights of the convicted than those of the victims to know the truth (he himself believing never to having found the truth during the trial, nor as a result of his meetings with the killer) and to receive compensation. Harada believes capital punishment to be an unjust punishment (certain killers choose to commit suicide after they killed as many people as possible). He wants those convicted to have the time to repent, to express regret, and to feel remorse; in short, a life of repentance as punishment.



Mr. Harada Masaharu,  
President and  
founding member of OCEAN

Emerging from Harada's observations on the function of the judicial system, his opinion is that the system disregards the mental state of detainees; that the secrecy surrounding the trial and execution is nefarious (which remains unknown when the executions will be carried out); that, while pre- conviction visits are allowed with some level of freedom, post- conviction restrictions on visits grow in significance (he supports the right of victims families to see the accused); that victims are not sufficiently supported (a lack of moral and psychological support and no compensation); that, in short, victims' rights receive short shrift when death is adjudicated to be the only and most just compensation for their loss.

The mission also met with six women, family members of detainees convicted in the Aum Sect case following the deadly toxic gas attacks in 1995. These women described the conditions of detention of their loved ones, the difficulties in seeing them, the censorship of all communication that leads to administrative dehumanisation, the impossibility of their loved ones to even see the sky etc. (see below, conditions of detention). The mission met also with lawyers of the detainees and with their family members (see the list of persons met, in annex).

Finally, the mission met with members of a prison visitors Association, Soba-no-kai, who also shared their experiences of detention conditions. These individuals also insisted, as will be seen below, that the situation is growing worse; that while there is stability, even a decrease, in the number of crimes, Japan is witnessing a general toughening (and prolongation) of punishments and of the death penalty in particular (the number of capital sentences having increased from seven to 23 per year over the course of the last 10 years).

## NGOs and pro-abolition movements

The FIDH mission met with representatives of diverse NGOs: Amnesty International (AI), Forum 90, and the Centre for Prisoners' Rights. These associations are particularly active on the death penalty issue and certain among them have contributed to Alternative Reports submitted to the United Nations Committee on Human Rights. Forum 90 is, in addition, an active organiser of public-awareness campaigns, as is evidenced by the Asian Forum Against the Death Penalty of 2001. The Centre for Prisoners' Rights was created in 1995 with the aim of making detention conditions compatible with international norms, of creating contact and relationships with overseas prisoners rights' associations, and of making its counsellors available to prisoners. All NGOs insisted, with the support of statistics, upon the deterioration of the situation, with regard to the enlarging number of capital convictions and executions at a time when criminality is stabilising, even decreasing.

Forum 90, reiterating its observations made to the previous FIDH mission, and with the support of witness statements arising from actual cases, expressed its conviction that Japanese laws and practices (concerning appeal procedures, conditions of amnesty, and the disregard of the convicted's mental state) are in patent violation of the International Covenant on Civil and Political Rights, of the ECOSOC resolution 1986/50 (concerning the mandatory appeal procedure to a higher jurisdiction) and of the ECOSOC resolution 1989/64<sup>14</sup> (concerning obligatory appeal control of the legality of decisions, and the possibility of a pardon or of a reduced sentence in the case of capital punishment). Amnesty International -- Japan called for:

- the application of moratorium on executions;
- the commutation of death sentences already pronounced;

14. See, Forum 90, Alternate Report on Article 6 of the ICCPR With regard to the Forth periodic report of the Gouvernement of Japan, *Rapport alternatif sur l'article 6 du PIDCP, concernant le quatrième rapport périodique du gouvernement du Japon*, September 1998, which remains contemporary in its descriptions.

- the end to secrecy surrounding executions;
- the introduction of procedural reforms, especially relating to pardons;
- the creation of enquiries into known cases of ill-treatment and a refusal to legal counsel.<sup>15</sup>

Over the course of interviews between FIDH and NGO representatives, certain representatives mentioned the contribution of the media to establishing an environment propitious to revenge and underlined that journalists have only limited access to detainees and have no real knowledge of detention conditions. A number of representatives also spoke of a hard task ahead for any legislation seeking moratorium but reaffirmed their commitment to continued lobbying and public-awareness raising. Staff highlighted further concerns with the death penalty and its application in Japan:

- firstly, it is essential to end the secrecy surrounding executions and to make all information public;
- secondly, NGO workers highlighted the dehumanising detention conditions, particularly on death row. Once the convicted party is locked away, isolated from the outside world, it is all too easy for the public to become accomplices in state-sanctioned executions.

In addition to educating public opinion, a task which seems essential to advance the political debate, the NGOs insisted upon the necessity of international pressure, even if such pressure from abroad could appear counterproductive given the baseless and cultural arguments waived by Government.

## Religious representatives

Various religious groups have discussed within themselves the possibility of creating an inter-religious Association, uniting Protestants, Catholics, Buddhists and Shintoists united against the death

penalty (Religious Network to Stop Executions). The mission met with a representative, the Reverend Kitani Hidefumi, who explained that, within the context of increasing secularisation, the Network made public statements expressing their disapproval following each execution.

The Reverend opposed the need for revenge and promoted the principles, widespread throughout the Asian culture, of forgiveness and of reconciliation. Buddhists, for example, detest the crime but not the criminal or the sinner. The criminal maintains his right to life; Man cannot assume the position of God and take a life. The Network has launched public awareness raising campaigns, notably with the assistance of a publication relating to the witness statements of approximately 20 Americans whose opinion on the death penalty have changed. The goal of the Network is to reconnect and reconcile believers for and against the death penalty. The Network hopes to create a sort of non-Governmental platform, with the help of civil society, health workers, and families.

## The influence of media

The media have significant influence on the formation of public opinion in its perception of individual legal cases as well as on general understandings of notions such as criminality and social harmony. Consequently, media impacts upon debates on the general atmosphere that reigns surrounding the death penalty. Several individuals met by the mission expressed their concern with the ethics of the media corps. Several of those interviewed pointed to the emblematic case in Hikari City, Yamaguchi prefecture. On 14 April 1999, a 23-year-old woman and her 11-month-old daughter were killed by young

15. AI, Japan : The Death Penalty : Summary of Concerns. La peine de mort : *résumé des inquiétudes*, 1/10/97, ASA 22/001/1997.

man aged 18 years and one month.<sup>16</sup> In this case, the sensationalism of the press was such that the Broadcasting Press Organisation, a public and neutral NGO with a reputation as an ethical watchdog, intervened to denounce the one-sided, partial and unjust media perspective. Also highlighted was the necessity of balancing in Japanese law and culture the rights of the freedom of press and the right of the accused to have a fair trial.

With regard to the written press, there are four chief Japanese-language newspapers: Asahi Shimbun, Yomiuri, Mainichi and Nikkei. During the first half of the 1990s, the media called for a national debate on the death penalty. After the Aum Sect attacks in 1995, debates against the death penalty, including the importance of the Council of Europe resolution of 2001 calling on abolition of the death penalty, abated significantly.

Television media, in addition to written media, sympathise first and foremost with victims' families, a stance which leads often to sensationalised reporting and premature assessments on the suspect's guilt. Moreover, other factors contribute to the partiality of information reported: the fear and shame of the accused' families and their reluctance to speak with journalists; a tendency of the journalists to conduct an unequal number of interviews with members of security forces and those involved in the Prosecution. Blanket media coverage, which takes place during the trial and at the moment of the final sentence, is a tangible influence on the way in which public opinion sees individual cases and upon the atmosphere in which any debate on the death penalty takes place.

The mission met with journalists from two rival newspapers: Tanaka Fumio of the Yomiuri Shimbun and with Yamaguchi Susumu of the Asahi Shimbun.

Mr Tanaka, economist by training,<sup>17</sup> speaking on behalf of his newspaper, strictly followed its editorial line: all crimes must be severely punished; the death penalty is valuable because of its preventative results. The Yomiuri proclaims itself to be independent from all forms of economic pressure and claims that it is public opinion that guides its editorial policy. To the extent that public opinion is favourable to the death penalty, the journal follows suit, without being overly zealous, and seeks neutrality. According to the newspaper, there is nothing inherently wrong with including emotion or sympathising with victims who society has ignored for too long. During the interview, the journalist evoked the principle of an eye for an eye. It is not because, Tanaka stated, at an international level the cause of a moratorium grows stronger that Japan must change. In response to the mission's surprise at these arguments, the journalist conceded somewhat and spoke in favour of removing the secrecy surrounding the death penalty and executions, particularly in the context where a jury is introduced and where victims' families have increased access to the Prosecution (on this topic, he referred the mission to his newspapers' treatment of these issues). This newspaper plans to organise an information campaign on the subject in the lead up to the entry into force of these new reforms.

Mr Yamaguchi expresses, in contrast, his personal opinions. Law reporter since 1991 with Asahi, he has access to the legal corner of the Tokyo district building. The editorial policy of his newspaper respects political neutrality, the freedom of expression, supports human rights, democracy and the independence of Japan, and contributes to world peace in the pursuit of happiness. The press, according to him, unfortunately agitates public opinion on certain trials and does not contribute to rational reflection. Most often, the press advocates

16. Criminal maturity in Japan is set at 20. However, the capital punishment is applicable from the age of 18.

17. He became his newspaper's self-taught death penalty specialist.



severe punishments. Victims' rights, after having been left to the wayside for years, are today (especially since the 1990s) overrepresented by comparison to those of the accused. Yamaguchi regrets the undeniable intimacy between industry, the police, investigators and Prosecutors. Additionally, press interns are trained often within police stations, places where they are best able to gather information, particularly concerning criminal cases. Consequently, there exists an unfortunate market for crime related information. Media, in evoking the public call for harsher sentences, forms rather than reflects the opinion of the public. Citizens accept the status quo in this atmosphere, which ends with an increase in the number of capital convictions even though the number of crimes stays constant.

Mr Yamaguchi also regrets the paucity of proper education for journalists charged with reporting such questions. Not understanding legal specificities presented by lawyers, journalists have a tendency to criticise such lawyers instead and not seek out the truth. In 2005, Yamaguchi opened a school, of which he is in charge, in order to better educate young journalists

Journalists have few opportunities to carry out real investigations or counter-investigations: Yamaguchi cites, however, the case of a journalist being able to prove the innocence of an accused, which influenced the course of the judgment.

Yamaguchi himself does away with sensationalism: in the case of the Aum Sect and of Hikari City, he did not criticise lawyers of the accused and instead identified flaws in the court's judgment. He seeks rationality. There are many journalists at Asahi Shimbun. Consequently, there exist diverging points of views that may expressed freely provided that such opinions remained faithful to the newspaper's editorial policy which, it is worth noting, does not officially support abolition.

The newspaper was recently attacked for having criticised Minister Hatoyama as the Grim Reaper. Flagellated with outrage from victims' families, the newspaper, without apologising for its criticism, expressed to the families that it understood their pain and that it would try to work with more respect in that regard.

Concerning the reforms relating to lay judges and the new role for victims' families close to the Prosecutor, his newspaper is organising a large information campaign throughout autumn, with the aim of educating and fuelling awareness of the public opinion.

## II. Current debates

### Secrecy

Transparency is a nonnegotiable of democracy. Yet, in Japan, the practice of secrecy seems to have evolved into custom, most notably concerning the death penalty. This mission had the opportunity to meet with multiple opinions of all sorts on the death penalty. All of them, regardless of their support or disapproval of capital punishment, regretted the secrecy that follows the pronouncement of a capital sentence, that is, the entirety of the phase under executive control.

And yet it is not solely at this juncture in the capital punishment process that secrecy is worthy of reprobation. As a consequence of Japan's adversarial system, the powerful Prosecutor is armed with all advantages of public administration but is unobliged to disclose information in his or her possession that could work in favour of the accused. The disparity of power only increases the already grossly unequal relationship between Prosecution and defence. This leads to nefarious consequences (see the Okunishi Affair), such as the conviction of innocent parties.

Current reforms will install lay judges as well as a pre-trial meeting between prosecutors, defense attorneys, defendants (optional) and judges which may facilitate an exchange of relevant documents. Secrecy may consequently be diminished, and with very few exceptions, no new evidence will be admitted at the hearing that has not previously been made known in the pre-trial meeting. That said, there can be no certainty that the Prosecution will forward all evidence in the accused's favour. Moreover, even if this reform appears to work towards the abolition of secrecy, it gives the highly undesirable impression that the outcome will have already been reached, even before the trial begins. The declared goal of the pre-trial procedure meeting is to quicken the

process (being a three-day judgment, so as not to inconvenience the citizen jurors for too long). Judges and lawyers met by the mission reported their fear of seeing expeditious justice, justice that is blind to judicial guarantees. Consequently, death penalty convictions could increase at an alarming speed, an outcome made even more possible by the fact that decisions of the lay judges will be made by the majority, and not on a unanimous basis.

FIDH's 2002 mission also condemned the secretive procedures surrounding the death penalty, the conditions of detention, and the process of execution itself. Execution was announced to the condemned individual only in the morning, and detainees' families learnt only of the execution after the fact, often by press. However, according to officials from the Ministry of Justice, efforts have always been made so that, to the extent that it is possible, concerned families are informed before the press. Witnesses relate that this policy is not blessed by universal success. Former Minister Hatoyama introduced press conferences to announce the name of the executed individual as well as a resume of his crimes, which was considered as an improvement by many, but failed to deal with secrecy at the other stages, which necessitate improvement. In addition, the press announcement played a role in making the death penalty part of everyday life, increasing its familiarity in the Japanese public and teaching citizens to live with it as a normality. Rational debates thus continue to suffer.

Further information kept secret is the details of the execution chambers themselves. Everything concerning the phase of justice and administration following conviction in a court of law which comes under the executive powers is subject to secrecy. While the principle of public knowledge of decisions is recognised under Article 21 of the Japanese Constitution, exceptions aiming to protect the right to privacy exist. A long-standing interpretation dating back 10 years on the exceptions available under Article 21 holds that exceptions apply to all information

that would allow for the identification of parties involved in the capital punishment case: freedom of such information could disturb the smoothness of an execution. The Ministry of Justice is the depository of information, even though such information should belong to the nation as a whole, and the Ministry does not consider the fact that it is those most interested by the execution, the condemned and their lawyers, who should be the ones to determine whether or not they wish the right to their private life be respected. A right that is, moreover, arguably grossly abused in public by media.

A lawyer, Emura Tomoyoshi, decided to launch an action against the Government to require the abandon of secrecy surrounding the whereabouts of execution chambers. 30 lawyers participated in this case. The case was judged at the local level on 18 January 2008 and dismissed. An appeal to the High Court, on 28 July 2008, reached the same conclusions. An appeal to the Supreme Court has been made.

The decision of the High Court was justified by in several ways. Firstly, according to the Court, the information guarded by secrecy is of such technicality that the public would not understand. Secondly, removing secrecy would produce injustice. Thirdly, transparency could have deleterious consequences upon the mental state of the convicted person (if he or she knew of the location of the execution chamber, so the argument goes, he or she could imagine his execution and thus descend into mental degeneration). Such explanations highlight the highly paternalistic character of the Government in regard to its citizens and the condemned.

It should also be noted that on each occasion that the Government is concerned and wins, the delays in judgment are particularly quick (only six months between the first case and appeal). Moreover, the explanations given are troubling and serve to work in the favour of the Government to the detriment of

constitutionality. It is possible here to raise questions as to the independence of the justice system given the well-known modalities of judicial nomination and promotion.

Secrecy as an inherent part of a State never sits well with true democracy. FIDH calls for the immediate removal of secrecy in both judicial proceedings and the execution itself.

## Separation of powers

Emerging from the mission's interviews is a fear of the non-separation of powers and their growing intermingling. Insufficiently independent from the executive, the judiciary exists in too close a contact with the legislature.

As the 2002 report repeatedly affirmed, democracy in Japan suffers from an uncomfortable separation of powers. Its existence is most certainly theoretically provided for; according to Article 76 of the Constitution of Japan: «all judges decide freely and according to their conscience and are required to maintain strict observance of the Constitution and its laws». However, while the competence of Japanese judges and magistrates cannot be questioned, the same cannot be said for their independence. The Japanese judicial system is rigorously hierarchical and controlled by the Supreme Court whose members are appointed by the Government. The President of the Supreme Court is named by the Emperor himself, upon the Government's suggestion (Article 6 of the Constitution). And while it may be said that Supreme Court judges do undergo public vetting in public elections following their nominations, such an a posteriori control is but smokes and mirrors. Tribunal and Appeals Court judges are also nominated by the Government but again upon the suggestion of the Supreme Court, whose suggestions are always followed. It is, moreover, the Supreme Court that defines a judge's function and his or her remuneration. It can therefore be said that the

Supreme Court is the holder of real power over the entire judicial system, working under Government control from where it has drawn its own membership. Such a structure of organisation gives credence to suspicions of insufficient independence. The case, mentioned above, concerning making knowledge of the execution chambers whereabouts, fuels speculation of an insufficiently independent justice system.

Not only strictly hierarchical, also worrying is the role of the Ministry of Justice in the office of Prosecutor. Prosecutor General, chief Prosecutor, first Prosecutor - all offices are appointed under the Minister's authority. These officers have the sole responsibility to begin Prosecution, with no provision under criminal law providing the right for individuals or civil parties to instigate Prosecution.<sup>18</sup> It is thus Prosecutors alone and at their discretion, without the obligation to bring suspects before a judge, who may order a police investigation and bring suspects before a court. The prestige and the authority from which Prosecutors benefit explains no doubt the extremely high level of convictions pronounced by Japanese courts (99.8%). To be guilty in the Prosecutor's eyes therefore equals a guilty verdict. In the majority of cases, when the Prosecutor calls for capital punishment, such a punishment is applied, even at the end of a process marred by numerous appeals (see below, the Okunishi Affair).

On the other hand, in an equally concerning manner, Japanese judges have great power in the decision and application of penalties. Therefore, a murder may be punished by anything from five years imprisonment to the death penalty. One individual with which the mission met, the retentionist Parliamentarian K. Hirasawa invokes, to explain this fact, the strong distrust of the Japanese people towards the legislature, an institution criticised historically

for multiple human rights violations. Two of the judges with whom the mission met and who chose to speak on condition of anonymity agree with the above characterisation of judges' powers, while also choosing to nuance it. On the one hand, it is less that the people trust the judiciary but more that they are uninterested in it, until the day that they themselves are confronted with it. Silence or passivity is not an indication of support. On the other hand, the enormosity of a judge's discretion is uncomfortable for many in the position. The legislature should, according to those interviewed, live up to its functions by establishing clear and proportionate punishment scales, and in a manner in which the power of an individual judge may be performed in a coherent and comprehensive fashion.

In any case, the status quo allows all parties to shirk responsibility. The political realm leaves interpretation and significant scope to the judge; the judiciary calls for clearer policy and guidance from the legislature; Ministry of Justice officials say that it is the role of Parliamentarians, who in turn invoke public disapproval of Parliament to call on the judge to take responsibility. The buck never stops. Neither the executive, nor the legislature, nor the judiciary are willing to act, demanding that the other make the first move. The situation is thus paralytic. All this leads to Minister Hatoyama criticising the length of trials and consequently questioning appeal processes and clemency appeals, judged by him to be time-wasting. This personal breach in to the judicial wing of Government, even though the procedures for appeal and clemency are tightly controlled (with, for example, need for additional evidence to be provided in the case of an appeal request) indicates the low regard in which the separation of powers is held by this Minister. He would do better to take the legislative initiative, by introducing new legislation, which falls within his Ministerial jurisdiction, in order

18. Following a guilty verdict in a criminal trial, a civil case may be brought upon the request of victims from December 2008.



to ensure and guarantee a mandatory appeal or that the request for retrial has the effect of mandatorily postponing any furtherance of the capital punishment process (see below). Furthermore, the Supreme Court is charged with fixing conditions arising from the jury reform, denying Parliamentarians their legislative prerogatives and unnecessarily obfuscating the role of the judge.

In the end, it is ultimately the Prosecutor whose powers are most reinforced, who finishes always by obtaining the decision which he seeks and the punishments that he requests. Numerous interviewees, judges, lawyers, and journalists insisted on the fact that the Government (the Minister and Cabinet), the Prosecutor, judges and police form in some senses a single entity, given the closeness of relations that exist at all levels, from education to career improvement (nomination and promotions). The media themselves contribute to this confusion, failing to always play the role of fourth estate.

### **Life imprisonment without parole and the toughening of punishments**

A new debate has emerged over the past years concerning the implementation of a new punishment: life imprisonment without parole (see above, Political Actors). While some see in this debate the possibility of reopening the debate on the death penalty and replacing capital punishment with an immutable life sentence, others see the call for a new punishment as a sign of increased hardening of Japan's legal arsenal. There is of course no guarantee that the death penalty would be abolished in exchange for the reform. While waiting, alliances between abolitionists and supporters of the new punishment are shaping a new debate and hypothesising on its potential.

It should be noted that the current Minister for Justice, Yasuoka Okiharu, the day following his nomination, spoke of his opposition to the introduction of the proposed new punishment, a punishment he judged too cruel. That being the case, the emergence of this new debate shows the repressive character of Japanese justice and how it has hardened over the past years. Those interviewed spoke not only of an increase in the number of individuals sentenced to death and executed, but also of an augmentation over the past years of the severity of punishments in general. The conditions of parole have hardened in practice, particularly as a result of pressure from victims' groups, but this hardening has not been the consequence of a legislative change. According to the law, it is still possible to release a prisoner on parole after he has served one third of his sentence. In reality, however, only 50.2% of prisoners have benefited from early release (in 2006), among which 63.7% have already served more than 80% of their sentence (a mere 6.6% had served less than 70% of their sentence<sup>19</sup>). In this context, life imprisonment without parole, which leaves open no possibility of social reintegration, constitutes a new sort of sentence:<sup>20</sup> a sentence that until now has been missing between the death penalty in life imprisonment (of indeterminate length) with the possibility, be it more and more hypothetical and tardy, of parole. It should be noted that the maximum fixed sentence of imprisonment was raised from 20 to 30 years in 2004, through an amendment to the criminal code.

Existing in parallel with a hardening of sentences, it should be noted that there has been no favourable response to a demand to clemency since 1975. Concerning requests for retrial from those condemned to death, the last was accorded in the summer of 1986. In that case, the request led to the acquittal in 1989 of Mr Akahori. Retrial was of

19. Source : White Paper on Criminality 2007.

20. The Criminal Code allows for conditional release for those sentenced to life imprisonment after 10 years. In practice, very few are so released and the average length of sentence preceding release is over 30 years (31 years and 10 months in 2007).

notable importance in 1975 with the Shiratori Affair. In this case, the Supreme Court had decided that the accused should be afforded the benefit of the doubt in the retrial. Four significant such requests followed (Saitagawa, Menda, Matsumaya and finally Shimada): in all four cases, the convicted was acquitted. At the end of these widely publicised cases, beginning in the 1990s, access to retrial was closed, as indicated in the cases of Nabari (Okunishi) and Hakamada. Additionally, the Office of Public Prosecutor at the Supreme Court (Supreme Public Prosecutors' Office) gave the instruction to Prosecutors of the Courts of First Instance (District Public Prosecutors' Office) and to Appeal Courts (High Public Prosecutors' Office) to no longer make certain elements of proof available to the defence.

In addition therefore to the partial diffusion of information concerning executions and the sensationalised climate created and supported by the media there exists, according to Professor Niikura, a climate of generalised surveillance and increased social control of which the death penalty one instrument, among others.

## **Fallacious arguments**

### **Justification by public opinion**

Supporters of the death penalty often justify their position by the necessity to respect public opinion. In short, *Vox populi, Vox dei*. And while this may be all too understandable from of populist politician, it is much less acceptable from those areas of politics which have the capacity to promote the well-being of society with which they are entrusted. Courage, vision and risk-taking are integral parts of politics, which must not fear public backlash if, for example, such a change is required by international human rights law. In France, for example, leading up to the abolition of the death penalty, surveys indicated that 63% of French citizens were favourable to it.

On closer inspection, things are not as clear-cut as they seem, contrary to sensationalist press and the efforts of the Minister for Justice. The latest official survey, or a least that portion of the survey that made headlines, indicates that 81.4% of Japanese are favourable to the death penalty. Yet while it may be that 81.4% of individuals responded positively to the survey second question («the death penalty is indispensable and cannot be avoided in certain cases»), responses provided elsewhere should temper the results. It should be noted that the question mentioned above was divided into «should not be abolished in the future» (61.7% positive response) and «could be abolished in the future if the situation changes» (31.8% positive response). As such, the survey-identified death penalty advocates represent no more than 61.7% of the 81.4%, being the 50.2% of those surveyed, a result which significantly modifies the argument and its force. That being said, it should be noted that the 2004 final figure has risen since 1994: the overall number of those in support of the death penalty has risen from 39.3% in 1994 50.2% in 2004, representing a 10% difference, and related without doubt to the attacks of 1995.

Yet it is possible that unpopular reforms be taken in Japan. For example, 80% of Japanese are against the jury reform. Citizens questioned would prefer that the decision-making remain with professional judges. This law has already been voted upon. Courage is all.

### **The confusion between the victims' rights and the death penalty**

Another popular argument is the so-called «retributive» character of the death penalty. Namely, the guilty party will pay the price of a crime and victims will receive just compensation in the same form as their suffering. Victims will at last be respected.

It is undeniable that victims have been Japan's forgotten people in the criminal system over the past

decades. That being the case, the repositioning of victims within the criminal procedure is said to simply re-establish equality between all parties. Yet such sensationalism, riding on the back of an election and fuelled by a baying press, poisons judicial procedures and underlines the impartiality required for the correct trial procedure. The presence of victims' families close to the Prosecutor, to facilitate victims' declarations and sentence proposals, is extremely worrying. The court must be a place of rational judgment, for the discovery of truth, and not for an eruption of irrationality facilitated by uncontrollable emotion.

Moreover, in what is already recognised by certain victims' families, and the NGO Ocean, the death penalty does in no way compensate victims: it does not bring back to life he or she who has died; it does not provide increased understanding of what happened to facilitate mourning. Certain families choose to call for the recognition of psychological shock and related support in any compensation made; these families occasionally demand access to see the accused and to speak with him in order to understand his or her real motivations and so to better mourn. They seek also to be included in consideration by the judicial system. The death penalty achieves nothing for them; it only serves to isolate that part of society identified, for good or for ill, as a danger.

### **The culturalist argument**

A culture-based argument is often presented as the ultimate voice in favour of the death penalty: «the death penalty is in our culture, you cannot understand, but you must accept it». Besides the fact that this cultural argument is never used for a whole host of other laws, to claim that the death penalty is a cultural specificity of Japan forgets a number of factors. The argument that refers to the need to expiate the crime through death, which also allows the accused to ask forgiveness, makes caricatural reference to the seppuku tradition

(a suicide ritual, also known as hara-kiri), often identified as an integral part of the Japanese culture of honour. Yet seppuku only ever concerned a small element of samurai warriors, and applied only in a limited historical period. As such, seppuku cannot be considered as an immutable part of Japanese culture.

If we were to give the cultural argument credence, the Ministry of Justice would not attempt, as it does, to prevent the suicide of the accused. However, all steps are taken in ensuring that the convicted individual remains alive until execution (video surveillance, detention in individual and anti-suicide cells, etc.). This ensures the individual maintains a stable mental state, signifying that the Ministry works to make the convicted party understand the meaning of his or her execution. Everything that could excite, upset, encourage, or in any way affect the mental stability of the convicted party is prohibited, which explains moreover the numerous restrictions placed on the condemned during the detention.

Several persons met suggested that the imperative of revenge could be considered as having been imported from the Western Christian culture. Buddhism, like other religions, seeks to advance the concepts of forgiveness and reconciliation, in what are the real specificities of the Japanese culture.

It should be borne in mind that during the Heian period (810-1156, and in 346 years), under the influence of Buddhism, the death penalty was not practiced.

## Case study: The Okunishi Masaru case, also known as the Nabari case

In 1961, in Nabari City, in Mie Prefecture, five people died after consuming poisoned drinks to 20 women at a gathering in Kuzuo District. Only 25 families are living in that district, the person responsible for this crime belonging necessarily to one of them. Okunishi was arrested as a suspect (among the victims were his wife and mistress) and, after having been acquitted in the first instance, as a consequence of certain witness statements, he was condemned to death on appeal in 1972. After several failed attempts to seek a retrial, the seventh request was positively received by the High Court of Nagoya, on April 5, 2005.

The evidences against Okunishi were: confessions obtained under constraint, which Okunishi later denied ; the fact that he reportedly was alone long enough in order to be able to pour the poison in the bottle ; dents' marks on the poison bottle's tap that were attributed to Okunishi; the discovery at Okunishi's home of a product which could have contained the poison.

Expensive enquiries allowed to reply to all accusations (lawyers and supporters from the whole country contributed financially to such enquiries): notes by the person in charge of the enquiry report a witness affirming that Okunishi did not stay alone; the dents' marks were not Okunishi's and could have been fabricated ; the product found at Okunishi's home was not the same as the one used for the poisoning (it was not the same poison and it would have coloured the wine).

In 2005, on the occasion of the seventh request, Nagoya's High Court accepted the retrial, as in the Shiratori case: the accused must benefit from the doubt, all evidences and their interrelation must be taken into account to help the accused, who is presumed innocent. Up to that moment, in the Nabari case, the Prosecutor had been following the directions of the Prosecutor's office to the Supreme Court prevailing before the Shiratori ruling, and had always refused to provide evidence to the defence that would be favourable to the accused. The rulings following the six previous requests for retrial had as well systematically refused to reconsider older elements, preventing thereby to take into account all the evidences, as well as their interrelation.

There was hope for a ruling in favour of the accused. However, the Prosecutor appealed against the decision of retrial. An appeal is pending to the Supreme Court. Okunishi is 82 years old. He has spent 36 years on the death row.

### III. Legal context

#### Domestic law and norms

Although the Japanese Constitution does not make reference to the death penalty, relevant articles are used in support of the abolitionist and retentionist causes: «all citizens must be respected as individuals. Their right to life... to the extent that it does not harm public well-being, remains the supreme concern of the legislator and of other Government officials» (Article 13); «no individual may be deprived of life or of liberty... outside those conditions provided for by law» (article 31); «the use of torture or of cruel punishment by an official is absolutely prohibited» (article 36). However, as was stated in FIDH 2002 report, the Supreme Court has never found capital punishment contrary to any constitutional provision (be it the prohibition on torture or on cruel punishment, or in relation to the right to life and freedom). Additionally, given that priority is to be given to the social polity as a whole and not individual, the court has judged the death penalty to contribute to the preservation of social harmony. As such, it appears that the Supreme Court considers the abolition of the death penalty to be the domain of policy and requires a legislative modification, and should not in any case emanate from the judiciary.

Various crimes are punishable by death, of which 12 may be found in the criminal code and the other six in specific laws. It should be noted that since 2002, the list of crimes punishable by death has increased by one, organised crime, punishable under the Law for Punishment of Organised Crime, Article 3(1). This crime is also punishable by life imprisonment or imprisonment of a minimum of six years. This fact confirms the widespread observation that over the course of the past 30 years Japan has moved in the direction counter to the international norm which seeks to reduce the death penalty's field of application. It remains to specify nonetheless that

in practice capital punishment is applied only to aggravated murder.

While in Japan age of maturity is fixed at 20 years, the death penalty may be applied from 18 years. This interpretation stems from Article 51 of the Law on Minors which says a minor *under 18* should be imposed life sentence instead of death. On 22 April 2008, the Appeals Court in Hiroshima handed down the sentence to death of an individual who was 18 years and one month old at the time of the crime (in the case of Hikari City, in Yamaguchi prefecture). According to the Supreme Court, 14 people younger than 20 years old at the time of the crime have been condemned to death since 1966.

On the question of mental disability, the Criminal Code states that (1) «an act committed by an insane person will not be punished. (2) An act of diminished capacity shall lead to the punishment being reduced. (Article 39). It seems, however, that this rule is poorly applied in practice.

Code of Criminal Procedure (Article 479 (2)) provides also that when a prisoner condemned to death is pregnant, the execution will be suspended by order of the Ministry of Justice. Paragraph 3 of the same article states that after the birth the execution may only take place with the express consent of the Minister.

Execution takes place, by hanging, in the confines of the prison, in the six months following the definitive condemnation to death (Article 475 (2) of the Law on Criminal Procedure) and within five days of the execution order signed by the Minister for Justice. The method of execution appears to be uncontroversial. Evidence demonstrates that the rule according to which the execution must take place within the six months following the definitive condemnation was not uniformly applied before Hatoyama took his office because this provision had been interpreted just as instruction, and not been considered as legally



binding. This extension of the delay is also due to the use of various remedies available by the death row prisoners. But recently, it seems that MOJ changed its interpretation.

In reality, the condemned prisoner is told of his or her execution by the Prison Director the morning itself, following an order conveyed to the Director by the Prosecutor, charged with the execution of all sentences, who himself has received a signed order execution by the Minister for Justice. The execution must always take place within five days following the Minister's order, except on weekends and public holidays.<sup>21</sup> The brief five-day timeframe is justified, according to Ministry of Justice officials, by the need to not unduly disturb the mental state of the condemned party and, consequently, the work of prison staff. According to the same officials, any further delay would be even worse. It is the Minister of Justice who, on advice from the office of criminal affairs, decides which detainee will be executed after a study of his or her case. The date of conviction is only one criterion among several. Questioned on this very point, the Prison Director in Tokyo did not wish to specify neither when nor where executions took place.

The condemned party goes to the execution chamber free of physical restraints. At his or her request, he or she is permitted to see a religious advisor and to say his or her last words. Officials from the Ministry of Justice sought to highlight that the detainee always undergoes medical examination before the execution: he or she is therefore always executed in a perfect mental and physical state.

The execution is officially announced by the Ministry of Justice during a press conference. Since December 2007, the name of the deceased is announced,

representing a significant change in policy. To the extent that it is possible, the family of the deceased is informed by telegram or telephone of the execution before the press conference.

## International law

### United Nations

In June 1979, Japan ratified the International Covenant on Civil and Political Rights (ICCPR). Article 6 of the ICCPR recalls that the right to life is inherent to every human person. It states in countries where the death penalty has not been abolished, its application should be reserved solely for the most serious crimes. The General Comment on article 6 of the ICCPR clearly states that states parties must move towards abolition of the death penalty. Abolition is discussed in such a way as to leave no doubt that abolition is desirable. The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life.<sup>22</sup> The expression «most serious crimes» must be read restrictively to mean that the death penalty should be a quite exceptional measure. The United Nation's Economic and Social Council Safeguards guaranteeing protection of the rights of those facing the death penalty states that the expression "most serious crimes" is to be understood whereby the scope of capital punishment "should not go beyond intentional crimes with lethal or other extremely grave consequences."<sup>23</sup> As a member state of the ICCPR, Japan is under the obligation to submit reports, to respond to concerns raised by the ICCPR's surveying body, the Human Rights Committee, and to take corrective measures that will harmonise national legislation with its international treaty obligations.

21. Execution does not take place on Saturdays, Sundays, public holidays, January 2 and 3, Dec. 29-31 according to Article 178 of new prison law.

22. General Comment No 6 on the Right to Life, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/84ab9690cccd81fc7c12563ed0046fae3?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/84ab9690cccd81fc7c12563ed0046fae3?Opendocument), para 6.

23. Adopted on 25 May 1984, Principle 1.

o date, Japan has submitted four periodic reports to the Human Rights Committee, the fifth, due for submission in 2002, will be discussed in autumn 2008. The first three periodic reports outline the international elements of protection of human rights incorporated into Japan's legal system. Following the third periodic report in 1993, the Committee recommended that the Japanese Government take all measures moving towards abolition of the death penalty, and immediately limit the sentence to the most serious crimes, improve conditions of detention of detainees on death row (undue restrictions on visits and correspondence and the failure of notification of executions to the family), as well as improve preventive measures of control against any kind of ill-treatment of detainees.<sup>24</sup>

In its comments on Japan's fourth periodic report (1998), the Human Rights Committee continued to express its concerns regarding the practice in Japan of the death penalty. The Committee regretted that "its recommendations issued after the consideration of the third periodic report have largely not been implemented." The Committee also expressed its grave concern that "the number of crimes punishable by the death penalty has not been reduced, as was indicated by the delegation at the consideration of Japan's third periodic report." The committee highlighted its profound concern with regard to detention conditions on death row, to the lack of procedural guarantees concerning pre-trial detention, to the high number of capital convictions based on witness evidence, and to the limited recourse to *habeas corpus*.<sup>25</sup> The United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty list obligatory measures that must accompany a sentence to death (mandatory appeal, and the assistance of a competent lawyer

at all stages in proceedings). Yet, as will be shown, Japan does not satisfy these demands. In addition, while in the domain of conditions of detention, the new law on prisons, which entered into force in 2006 and was revised in 2007 (Law on Conditions of Detention and Treatment of Prisoners), has improved the compatibility of Japanese domestic law with international norms (including article 7 on the ICCPR prohibiting torture, the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and a myriad of other rules concerning the treatment of prisoners), criticisms persist, particularly with regard to overcrowding, the lack of medical care and the use of solitary confinement.<sup>26</sup>

#### **Japan ratified the United Nations Convention Against Torture in 1999**

Article 1 of the Convention Against Torture defines «torture» as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

In its 2007 report, the Committee against Torture, after having made note of several improvements, continued to express its concern that this definition

24. Concluding Observations of the Human Rights Committee, Japan, CCPR/C/79/Add.28, 5 November 1993, <http://www.unhchr.ch/tbs/doc.nsf/0/03bb41d87af3bc27c12563ed0045ca4a?Opendocument>.

25. Concluding Observations of the Human Rights Committee, Japan, CCPR/C/79/Add.102, 19 November 1998, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.102.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.102.En?Opendocument).

26. See the report of the Committee Against Torture, delivered 30 April-18 May 2007, CAT/C/JPN/CO/1, particularly, Paras 17 and 18.

has yet to be incorporated into domestic law, and was preoccupied also by the absence of relevant information relating to the correct application of the Convention that may serve to maintain current impunity.<sup>27</sup>

### **The Council of Europe**

In 1996, Japan obtained observer status at the Council of Europe. In conformity with the Statutory Resolution (93) concerning observer status, Japan must be “willing to accept the principles of democracy, the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms «. Some years later, the Parliamentary Assembly called on Japan (as well as the United States of America) (i) to institute without delay a moratorium on executions, and take the necessary steps to abolish the death penalty; (ii) and to improve conditions on death row immediately, with a view to alleviating the death row phenomenon (this includes the ending of all secrecy surrounding executions, of all unnecessary limitations on rights and freedoms, and a broadening of access to post-conviction and post-appeal judicial review).<sup>28</sup>

The situation in Japan has been studied by a mission in 2001 comprising Mr Gunnar Jansson, President of the Parliamentary Assembly’s Committee on Legal Affairs and Human Rights. His mission took the occasion to further reflect on a report concerning the abolition of the death penalty in countries having observer status at the Council of Europe, published in June 2001. This report led to the adoption of resolution 1253 (2001) and to the organisation of a debate on the subject with Japanese Parliamentarians. In this context, a seminar on the abolition of the death penalty was co-organized by the Diet Members’ League for Abolition of the Death Penalty and Parliamentary Assembly of Council of

Europe, gathering high-level representatives from Japanese authorities, including Presidents of both houses, and the Justice Minister Mayumi MORIYAMA also made a speech. The Council of Europe assembly also resolved to reconsider Japan’s permanent observer status, and that of the United States America, if no significant progress was accomplished by January 2003. This threat, however, remains to be translated into action.

When questioned on the possibility that Japan’s observer status at the Council of Europe would be withdrawn, many of those met by FIDH, in 2002 as in 2008, were hardly convinced, largely believing that such an action could be counter-productive, even if in agreement that it is important to find an effective means by which the Japanese Government may understand its obligations to respect international law.

### **The European Union**

The European Union and Japan have taken part, since 1991, in a political dialogue on human rights. It should be the case that, in accordance with the European Union’s Guidelines on the Death Penalty adopted in June 1998, the question of the death penalty is systematically raised during such dialogue sessions. However, the conclusions from the last EU -- Japan summit of 23 April 2008 do not mention the death penalty. By its own admission, the European diplomats met by the mission affirmed that Japanese authorities pay scant attention to the EU position on the death penalty, reflected by regular refusals to meet with EU officials and executions that take place the day following the few meetings that do take place.

The mission was received by three members of the diplomatic corps at the French Embassy of Japan. In its position as the current EU presidency, the members of this meeting discussed the scope of

27. Paras 10 to 12 of the report.

28. Council of Europe, Resolution 1253 (2001).

possible international action that could engender change in Japan. The essential problem with this diplomatic approach lies in the fact that all international pressure is perceived by the Japanese authorities as interference. It must not be forgotten that in the region Japan is often a very useful ally when it comes to exercising pressure in other countries on the question of human rights. It is important that this powerful regional democracy not be alienated.

The embassy proposes to organise a series of events on the issue of capital punishment during its term as EU President. Japanese civil society will certainly participate. Other proposals formed following suggestions from Professor Niikura include meetings where a broader range of problematic fundamental rights are discussed, some focusing on Japan, such as efforts for peace and the prohibition on arms production (perhaps using article 9 of the Japanese Constitution as an example).

### **The International Criminal Court (ICC)**

Entered into force on 1 July 2002, the ICC Statute may prove a useful tool to influence the positive development of the abolitionist movement worldwide. The Statute rules out the use of capital punishment, in accordance with the modern-day evolution of international criminal law. The Japanese Government has shown its interest in the ICC and undertaken to study harmonisation of the ICC Statute with domestic law. The possibility of Japanese democracy joining the movement of State Parties to the ICC (106 States parties as of 1 June 2008) had given rise to a hope for potential abolition of capital punishment even if, when it comes to sentences applicable in national jurisdictions, the ICC Statute defers to national laws (article 80), a legacy of a compromise reached at the Rome Conference. Having ratified the ICC Statute on 17 July 2007, the state must now work to incorporate it into its domestic laws.

## IV. Violations of the right to a fair trial

The Constitution of Japan imposes rules governing a fair trial such as those defined by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, ratified by Japan in 1979. Article 34 of the Constitution declares that “no person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel”. Article 37 states, “in all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal. 2) He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense. 3) At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State”. An independent and impartial court, where rights of the defendant are guaranteed under all circumstances, is indispensable to a fair trial. However, as the 2002 FIDH report previously highlighted, those sentenced to death in Japan do not always benefit from the totality of these guarantees that should, given the sentence of death, be even more rigorously applied. While those sentenced to death are not convicted under a legal system particularly deficient except, as was shown above, the lack of independence between the executive and legislative arms of Government, the rights of the defendant are palpably violated at all stages of the process.

### «Daiyo kangoku»: an unacceptable status quo

Unfortunately, the entirety of FIDH’s 2002 comments on what occurs in Japanese police stations during

pre-trial detention remains valid and continues to be regularly denounced by the JFBA. The Association has, for example, published in April 2008 a brochure entitled «Japan’s ‘Substitute Prison’ Shocks the World” and produced a 45 minute documentary relating the catastrophic consequences on individual lives and the judiciary resulting from such a system.

According to provisions of the Japanese Law on Criminal Procedure (articles 199 and following), every person subject to an arrest warrant must be brought before a Prosecutor at the latest three days (within 48 hours) following his arrest. The Prosecution must provide a judge with reasons for on-going detention, a failure to do so will result in the detainee’s immediate release. The detention order is valid for 10 days but may be renewed for a further 10 days, 15 days in certain cases. This detention may also be prolonged if the accusations emerge during the course of the enquiry. Legal provisions in force in Japan therefore authorise detention justifiable by the needs of the enquiry and before any judicial decision is made. In the case of individuals faced with serious presumptions of guilt, detention lasts several weeks.

While this detention is theoretically in prison, it is in reality often carried out in police stations. During the approximate 20 day period, suspected persons, unaware of the accusations against them and without access to evidence of presumptions made against them remain under the discretionary farm of police forces, under surveillance and control day and night. All contact with the outside world remains at the complete discretion of the Prosecutor and of the police who know how to use such isolation to obtain the sought-for confession. For it is surely the goal of such treatment, contrary to article 14.3 of the ICCPR, as interpreted by General Comment Number 13 relative to Article 14, which states that: « the accused may not be compelled to testify against himself or to confess guilt. ... The law should require that evidence provided by means of such methods or any other form of compulsion is wholly



unacceptable”.<sup>29</sup> Additionally, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states, “It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person”.<sup>30</sup> Domestic law is coherent with these international norms. Article 38 of the Constitution states, 1) “No person shall be compelled to testify against himself. 2) Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence. 3) No person shall be convicted or punished in cases where the only proof against him is his own confession”. Article 319 of the Law of Criminal Procedure contains a similar provision (that is, a prohibition on the conviction of an accused on the basis of one confession). However, everything is performed during the detention within police stations with the goal of obtaining from the suspects confessions for crimes of which they are accused. Subjected to inordinately long interviews, detainees may undergo violence, receive threats, all with the goal of having them confess. Such treatment may last weeks, with the length of such investigations not being governed by any rules or with the obligatory presence of a lawyer. Indeed, lawyers are not allowed to be present at the interrogation.

Regularly denounced<sup>31</sup> as contravening all principles of a fair trial (in respect of the presumption of innocence, non-respect of the right to remain silent, forced confession, cruel, degrading and inhuman treatment), the system of *Daiyo Kangoku* is particularly worrying in the case of individuals suspected of crimes carrying the death penalty. Human rights defenders underline regularly the risk of judicial error that may occur as a result of such

pressure concentrated over long periods and could lead therefore to erroneous applications of capital punishment. Groups recall the case of Sakae Menda, brutally interrogated over four days without sleep at the Hitoyoshi police station with resulted in the suspects confessing to several killings during a burglary in December 1948. Condemned to death, he was the first prisoner condemned to death to be acquitted as a result of his sixth appeal. He was released in 1983 after 12,599 days on death row. Shigeyoshi Taniguchi, condemned to death in January 1957 on the basis of confessions made in a four-month long custodial period, was also acquitted in March 1984 after 10,412 days in detention.

In the face of such criticisms, Japanese authorities have declared in their periodic reports in 1993 and 1998 to the United Nations Committee on Human Rights that a strict separation at police stations between those authorities concerned with detention and those concerned with investigation was maintained at all times, in order that those conducting the investigation would not influence the daily life of detainees. This administrative distinction is less than satisfactory when both interrogation and enquiry occur in the same location. The Japanese Government also highlighted important improvements that have been made to custody centres (heating, air-conditioning) and argued that this form of detention was in the best interest of suspects, who could remain close to their home and family, and affirmed that the length of custody was in no way inordinate. The Government continually reaffirmed the prohibition on all forms of violence under the Japanese Constitution and that police officers receive human rights related training that makes any abuse unlikely.

29. Human Rights Committee, General Observation n° 13, para 14, 13 April 1984, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bb722416a295f264c12563ed0049dfbd?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?Opendocument).

30. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, para. 21, 9 December 1988.

31. See notably FIDH, Japan : La garde à vue, February 1989; FIDH, The Death Penalty In Japan, A Practice Unworthy of a Democracy, 2003 ; JFBA's 2008 alternative report to HRC, [http://www.nichibenren.or.jp/ja/kokusai/humanrights\\_library/treaty/data/Alt\\_Rep\\_JPRep5\\_ICCPR.pdf](http://www.nichibenren.or.jp/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep5_ICCPR.pdf)

Human rights defenders call for, however, nothing less than a complete abolition of this iniquitous system.<sup>32</sup>

## Free legal assistance at all stages

Officially, the rights of the defence are clearly enumerated in Japanese law. Legal assistance is obligatory throughout the entirety of the proceedings from the day the accused is charged and, if the accused does not have a lawyer, the State appoints one. If the defendant needs jurisdictional assistance, it is provided before she/he is formally charged.

Yet there is an imbalance of power because if lawyers have access to information provided to the court, they may not always consult the information held by police and Prosecution. In addition, confidentiality of lawyer/client relationship is not guaranteed as regards correspondence.

## The Problem of Legal Remedies

### The first level of jurisdiction

In conformity with the law in force, the accused risking death appears before one of the 50 district tribunals, composed, until the entry into force of the reform on the civic juries, of three judges. This is the first stage of the Japanese criminal law. The trial is conducted on the adversarial model and Prosecutors are under no obligation to make evidence favourable to the accused available unto him or her. The accused has the onus of bringing forth all documents in the evidence of innocence or extenuating his or her responsibility. This onus presupposes no means to gather such documents, when such means are often unavailable, especially to more indigent accused.

From May 2009, ordinary citizens will sit in these

juries, complementing the existing combination of three professional judges. The reform introducing this change had been promoted by a significant part of Japan's political class as well as human rights organisations with a view to raising awareness among Japanese citizens of the judicial domain. However, many of those with whom the mission spoke remained unconvinced as to the capacity of this new system to improve the application of technical requirements and to not transform the trial into a farce. Only civic education involving the principles and purposes of a criminal trial will make this a worthwhile reform instead of an instrument in the service of sensationalism.

The fear of the reforms' fecklessness is even more valid given the entry into force of an additional reform, inspired by the country's conservative forces. Japan's law on criminal procedure was amended in 2007 so as to re-evaluate the position of victims during trial, without making of them a *stricto sensu* plaintiff claiming damages ("*partie civile*") in the criminal trial. What is problematic is not that, in particular since Law n° 161 of 2004, the authorities take more into account the right of victims to a financial compensation for the damage resulting from the crime and to a psychological support, and but that victims can henceforth participate in the trial along with the Prosecutor, question the accused and the witnesses. Indeed, this reform combined with the introduction of lay judges, may overhaul the balance of the trial

These laws will indeed enter into force on 1 December 2008 and have already been heavily criticised by human rights defenders who see in them the destabilisation of the trial to the detriment of the accused while at the same time not representing an increased chance of effective compensation for victims.

32. JFBA, *Ibid.* ; Concluding Observations, CAT, CAT/C/JPN/CO/1, 7 August 2007, <http://daccessdds.un.org/doc/UNDOC/GEN/G07/433/73/PDF/G0743373.pdf?OpenElement>.

## The right of appeal

The convicted party may appeal to the Appeal Court. And again, while this right may be guaranteed in theory, two significant problems emerge in practice.

Firstly, an appeal is not mandatory. As a consequence, an appeal rests with the initiative of the accused or the Prosecution. Some detainees have been executed upon the sole judgment of the Court of First Instance. This was the case of Yoshiteru Hamada, executed in September 2002, who had initiated an appeal only to later withdraw it subsequently, rendering his original sentence definitive.

Yet it is the existence of a mandatory appeal procedure for those condemned to death that is the fundamental guarantee against judicial error, an eventuality particularly serious in the case of irreversible punishments, such as the death. This irreversibility has been recalled on numerous occasions by the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty<sup>33</sup> and by the Parliamentary Assembly of the Council of Europe.<sup>34</sup>

The guarantee to the mandatory appeal is even more crucial given the reality that many of those convicted are unaware of their right to appeal, as was explained to the mission members by six women whose family members are involved with the Aum Sect. Others sentenced to death may not appeal in response to the fact that, as the case makes its way through the system, sentences at present tended to increase in severity, as was explained by members of the CPR. Furthermore, pressure of public opinion, often encouraged by incendiary press articles (see above), constitutes an additional form of intimidation which may have the effect of causing those sentenced to death to abandon their right to appeal. At the same time, the Prosecutor

himself has historically shown no reluctance to appeal decisions that he judges to be insufficiently punitive, even to the extent to abuse this right of appeal, as in the case of Okunishi (see case study below).

The lack of a mandatory appeal is an uncomfortable and festering issue. Despite the mission's insistence on this point, representatives of the Ministry of Justice carefully avoided responding to all questions and requests concerning legislative change.

Secondly, Japanese courts seem to ignore the notion of reasonable delay, notwithstanding its clear affirmation in article 14.3 (c) of the ICCPR. General Comment Number 13 of the United Nations Human Rights Committee on this article confirms that the guarantee according to which the accused must be judged «without unnecessary delay» applies to all stages -- both in first instance and at appeal (paragraph 10). Yet those condemned to death are often confined to death row for many years. The 2002 FIDH report highlighted certain stories: Seikichi Kondo, sentenced to death by the Appeal Court of Sendai 28 June 1977 and by the Supreme Court on 25 April 1980, executed 26 March 1993; Sujiro Tachikawa, condemned to death by the District Court of Matsuyama on 18 February 1976 and by the Supreme Court on 26 June 1981, hanged 26 March 1993; and we may add to the list the case of Hakamada, whose appeal process took 20 years to be examined.

At the same time, when an appeal is made by the Prosecution or at the Government's instigation, decisions are often delivered within very reasonable time frames.

A final appeal to the Supreme Court does exist, however, its effectiveness is questionable as it appears to exist in statute and not necessarily in practice. As the 2002 report underlined, it is rare

33. Para. 6.

34. Resolution 1253 (2001).

that the Supreme Court, which does not consider the death penalty unconstitutional, strike down a decision made by an inferior court. Once made, any condemnation to death is considered definitive.

## **Retrial**

For a so-called definitive decision to be challenged, a party must request a retrial. For this to be effective, the accused must gather «new, clear evidence», for example evidence that information previously relied on is contrary to reality. A retrial takes place at the same court that handed down the original sentence of capital punishment (the District Court in first instance or a High Court on appeal). There is no limit to the number of retrials except that at each retrial, for it to be valid, new and clear evidence must be presented. So, Mr Menda was obliged to formulate six requests for a retrial before being declared innocent of a crime for which he had been condemned to death 34 years previously.

A particular problem relating to retrial and one on which the JFBA and the Ministry of Justice disagree relates to the suspending character of the retrial. The law does not provide for a stay of execution during a request for retrial, meaning that an execution may take place before a decision has been made. If the case was reopened, the execution is stayed.

This was the unfortunate case of Teruo Ono, executed on 17 December 1999 after having sought multiple retrials. The request for retrial was not expeditiously sent by the court to the Prosecutor's office. In the meantime, Ono was executed. Ono had spent 18 years on death row.

It is also possible that someone condemned to death be executed even as his or her lawyer is set to appeal, a fact known to the Minister. Such was the case for Tsutomu Miyazaki, hanged on 17 June 2008.

It had been stated to the previous FIDH mission that a request for retrial forms one element in the Minister's

decision before deciding whether or not to execute. Representatives of the Ministry met by the mission did not disagree with the existence of this unwritten rule but are critical of the manner in which it delays proceedings. Given that retrial must obey strict conditions, it was thought that the right to retrial may be abused and requests made endlessly despite the absence of new evidence.

A final and convincing argument made by the JFBA in favour of a stay of executions during retrial is the fact that all four trials sent to retrial in the 1980s led to acquittal (Sakae Menda, Shigeyoshi Taniguchi, Yukio Saito and Masao Akahori). This is because in four cases, the cases were formally reopened, and after that the courts made decisions to stay executions, according to the Code of Criminal Procedure. Ambiguity surrounding whether or not retrial results in a stay of execution, as the 2002 report highlighted, represents a serious breach of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (paragraph 8) which states, "Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence".

## **Pardon**

Only three of the condemned have benefited from a pardon since 1969 and none since 1975. The request of clemency must be made by the wardens, prosecutor or director of probation office. If an inmate request pardon, warden must make an application with his or her opinion regarding the case. Victims are not entitled to request or make an application. In the Harada case, the brother of the victim asked pardon of the offender from the Minister of Justice, but it was not the procedure under the law. A refusal of clemency does not require justification.

A request for pardon does not serve to suspend the execution which, once more, is contrary to U.N. Safeguard No. 8

## Case study: Matsumoto

This case was brought to the attention of the mission by Shimaya Naoko, member of the NGO Forum 90, working successfully for 30 years in the case of another person sentenced to life imprisonment, Mr Kazuo ISHIKAWA (Sayama case). The facts relating to the Matsumoto case were communicated to him by Mr Okamoto, who wrote to him from Osaka prison.

Born in 1951 and mentally disabled following mercury poisoning, Kenji Matsumoto was condemned, 4 April 2000, for two murders committed during robberies. There is no question that he was at the scene of the crime. His brother, who committed suicide before arrest, had been accused of conspiracy. Matsumoto's lawyer relied on a decision of the United States Supreme Court concerning mentally disabled individuals to press the case for a retrial or for a pardon. In vain. The Japanese court, while recognizing the mental state of Mr Matsumoto, did not conclude that his disability rendered him legally irresponsible for his acts. Currently, after not having walked since his arrest, he is confined to a wheelchair. He has also attempted suicide. When meeting with an officer from the Office of Criminal Affairs, on 31 July 2008, and in response to the mission's questions regarding this case, it was stated that no comment could be made so as to preserve the independence of the judiciary. Furthermore, the official claimed that Matsumoto's mental disability did not prevent him from understanding his acts and of being condemned to death.

This case is symbolic of the deterioration in detention conditions since 2002, of the poor retrial system, and of the fate reserved for mentally disabled individuals under Japanese criminal law.



## Case study: Matsuo Fujimoto

In 1951, in Kumamoto Prefecture (Kyusyu area), an explosion occurred at a house of prefectural public officer who had been working as an officer in charge of hygiene related affairs. Two people were injured by the explosion and Fujimoto was arrested on charge of attempted murders. Court sentenced him to 10 years imprisonment. The former officer reported to the higher officer that Fujimoto was suffering leprosy and accordingly Fujimoto was put into a leprosarium, an isolated facility which housed leprosy patients, and then Fujimoto had a grunge against the former officer. But after the sentence was handed down by Kumamoto District Court in June 1952, Fujimoto escaped from the detention facility which was located inside the leprosarium. The following month, July 1952, the former officer was stabbed and killed on the road. Fujimoto was rearrested on charges of murder and so on. A written statement in which Fujimoto admitted to the murder was made, but after that Fujimoto continued to claim his innocence.

Trials were held in the specially made courtroom which was located in the leprosarium. He was executed in Sep. 1962, on the very next day of his third request of retrial was rejected.

Fujimoto was the victim of prejudice, deep seated at the time, against those with leprosy and, in addition, of a judicial error. This may be the case of an innocent party being executed as a consequence of widespread discrimination that contributed to a biased judgment. Public opinion is today supportive of the fight against discrimination on the grounds of leprosy. Such an example could consequently be used to influence public opinion and dislodge the popularity of capital punishment.

## V. Conditions of detention and of execution

Since the last FIDH mission on the death penalty in Japan in 2002, there have been some changes regarding the legal framework and the situation of detention houses. The Prison Law was replaced by the Law Concerning Penal Institutions and the Treatment of Sentenced Inmates, entered into force in May 2006. This law initially applied only to convicted prisoners other than death row inmates. The scope of this law was revised in 2007 in order to cover pretrial inmates and death row prisoners as well. The law was then renamed (Law on Penal Facilities and the Treatment of Inmates, which entered into force in June 2007). The modern and “hi-tech” equipped new buildings of the Tokyo Detention House and Nagoya Detention House were completed respectively in 2007 and 2008 and were proudly presented to the FIDH delegation. The prison law leaves space for interpretation by individual wardens, thus we may find different treatment and rules in different detention houses. Prisoners are given a written booklet of prison rules, but it is only publicly available through application of disclosure based on the Law Concerning Access to the Information held by Administrative Organs.

### Living Conditions in the Detention Houses

In the Tokyo Detention House, the 12-story administrative building, and the 11-story south and north cellblocks were completed respectively in 2003 and 2007. The central building is the administrative offices; on top of it, there is a helipad. Four wings connecting to the central building are the cells and on top of the four constructions, there are fenced exercise places for the inmates (see picture below). The Nagoya Detention House has two main buildings, east wing and west wing, respectively 8-story and 12-story tall. The Nagoya Detention House is located in the heart of Nagoya city.



The capacity of Tokyo Detention House is 3010 for pretrial and convicted inmates, and the current occupation is 2300 (until July 29); among them there are 52 death row inmates. The capacity of the Nagoya Detention House is 1000 inmates and the current occupation is 733; 11 of them are death row inmates.

The security in the new buildings of the detention house is strengthened, with 913 spots of fingerprint reading devices and 24 hours video surveillance in Tokyo Detention House. The iron bars around the cells and prison buildings are replaced with tempered foggy-surfaced glass. Transit systems are built in the new buildings to transport boxes of inmates' personal belongings.

In the Tokyo Detention House, the inside space of a new single cell is measured 3.75 meters deep and 2 meters wide which is bigger than the old cell (measured 3.3 meters deep and 1.8 meters wide). In the Nagoya Detention House, FIDH was told that a single cell measured 5.9 square meters, which is bigger than the one in Tokyo Detention House. However, in practice, the space of a single cell in the Nagoya Detention House is actually much smaller than the said measurement. One explanation is that the thickness of the walls is included in the calculation. Death row inmates are kept in single rooms. A single room is equipped with a wash basin, a toilet seat, a

book shelf, a folded low table and futon mattress for sleeping; there is no bed in the cell. There is no separate space for the toilet. Only cold water is provided from the faucet. FIDH was told by one of the inmates' mother that in the past, each death row inmate could keep up to 20 boxes of personal belongings in the detention house. The inmates have to apply to access the boxes to get whatever they need. Now, only three boxes of personal belongings, including toilet tissue, are allowed in the detention house. However, due to limited space, they can only keep a suitcase of 50 liter of personal belongings in the cell. On one side of the cell, there are double foggy glass windows and a hallway where sometimes the guards patrol; on the other side, there is an iron door to the main hallway and a glass window from where the food is sent in. Inside the cell, there is no air-conditioning nor heating. The temperature and lighting are controlled from the main hallway.

Collective rooms, which can usually accommodate 6 to 8 convicted inmates, are similarly equipped, except that the toilet is separated from the rest of the living area with walls and a door. In the Nagoya Detention House, single rooms and multiple rooms are similar as in the Tokyo Detention House, except for the sizes of the cells.

Outside of the cell, next to the door, a plate indicates the current activities and whereabouts of the inmates such as exercising, bathing, meeting, medical checkup, investigation, out to court/working, in the cell or other activities. The inmates can be monitored from the central monitor room by the prison staff.

Death row inmates are not required to work during detention. The officers at the Nagoya Detention House told FIDH that if death row inmates wish to work, they can be assigned some work such as making paper baskets in their single cell.

The daily schedule of a death row inmate is the same as a pretrial defendant:

### Tokyo Detention House

7:00	Wake-up
7:15	Roll Call
7:25	Breakfast
11:50	Lunch
16:20	Supper
16:40	Roll Call
17:00	Free Time
21:00	Lights-Out

### Nagoya Detention House

7:00	Wake-up
7:40	Breakfast
11:30	Lunch
16:20	Supper
17:00	Prepare for Sleep
21:00	Lie-down/ Lights-Out

One Sapporo-based lawyer who defends death row inmates told FIDH that from the cell of the old detention house building, the inmate could see the sky from the window, and he could even keep insects as pets. But with the “modernization” of prison cells and buildings, the inmates are completely shut out of the outside world. They cannot see the sky, the lawn, and they cannot smell the soil or feel the wind. One mother of a death row inmate told FIDH that when she visited her son she used to show him the sky. She said that in the old building, her son could see the sky. However, from the newly built cells with double window, it is impossible to see the sky.

When staying in the cell in the daytime, the inmates must sit in a certain spot with a certain position; they are not allowed to lie on the futon mattress. FIDH was told this is for security reason and so the prison staff can monitor the inmates' activities in the cell and it is easy to count them. Whenever prisoners

encounter outside visitors during their work, they must not look at the visitors in the eyes so they have to bow their heads and wait for visitors to pass.

## Visits and Contacts

### Visits and Meetings

After the Law Concerning Penal Institutions and the Treatment of Sentenced Inmates was modified in 2007 (and renamed Law on Penal Facilities and the Treatment of Inmates), inmates do not have limitations on how many times they can meet with lawyers and no officers are required to attend the meeting and take notes. However, this does not apply to death row inmates.

Article 89 of the Law Concerning Penal Institutions and the Treatment of Sentenced Inmates stipulates that visits to inmates by the following persons may be allowed: (i) relatives of inmates; (ii) persons who are required to meet inmates to deal with material businesses of inmates relevant to their status, legal or professional conditions; and (iii) those whose visits are considered to give good effects on inmates in connection with their rehabilitation. Other individuals such as those who have continuous and previous relationship with an inmate can apply for visits and can be allowed.<sup>35</sup>

One mother said that since the Law on Penal Facilities and the Treatment of Inmates entered into force in 2007, only four members from her family and friends are allowed to meet with her son. In practice, death row prisoners are often only allowed to meet with three persons by the prison authority. The law specifies two categories of visitors: one category of visitors has a right to see the inmates, while the other can be allowed to see him/her on the

discretion of the warden. For this second category, it appears from the interviews carried out by FIDH that the decision can be very arbitrary.

According to the law, a list of visitors will be approved by the prison authority but there is no limitation of the numbers of visitors. However, in Nagoya Detention House, the maximum number of visitors to one inmate is five and the names of these five people have to be indicated, not including family members and lawyers; while in Tokyo Detention House only three visitors are allowed on the list. At most 3 people are allowed for one visit, and an inmate can only receive one visit a day. The Law does not require the attendance of a prison officer during visits by lawyers who are legal representatives of the inmates, but in practice, according to families of detainees met by the FIDH mission, a prison officer is often present during a visit of a death row inmate, taking notes of the conversation. Visits are usually limited to 30 minutes, sometimes even less.

One family member of a death row inmate told FIDH that the visiting time used to be a maximum 30 minutes per visit. Now the maximum meeting time is only 15 minutes, once a day, and only one visitor allowed is in an individual room. During the meeting, the prison officers will record or take notes of the dialogues between the death row inmates and the family members or lawyers. MOJ and prison officers explain that it allows them to check the inmate's mental condition. Another inmate's family member said sometimes an experienced senior officer will just let them talk without taking notes. A meeting with a death row inmate is always under surveillance; a daughter thinks it is difficult to express emotions and exchange information under such monitor.

35. Japan Federation of Bar Association, October, 2006, "Information for Prison Inmates" (New Version Corresponding to the Newly Enacted Law Concerning the Treatment of Sentenced Inmates), third edition.

As a victim's brother and death penalty abolitionist, HARADA Masaharu, told FIDH that there was no limitation on meeting the defendant before the final verdict. After the verdict, when he wanted to visit the murderer of his brother, Harada got the permission from the MOJ and the warden told him that because he had been corresponding with the defendant he could continue meeting the defendant after the verdict without limitation. Harada thinks the rights of victims' families have been neglected by the judicial system. He suggested that the victims' families should be authorized to meet the murderer in order to know what has happened.

### **Communication and Correspondence**

The law does not restrict the right of death row inmates to send and receive letters. However, based on a circular by the Director General of the Correction Bureau dated March 15, 1963, death row inmates "should be separated from society, and restrictions on their communication should be a logical obligation from a viewpoint of securing their custodial conditions and preventing social unrest".<sup>36</sup> The restrictions made by the Correction Bureau seem quite arbitrary and are seriously hindering the rights of death row inmates. In the Nagoya Detention House, the correspondence with a death row inmate is limited to five authorized correspondents, and in most cases, they are family members or lawyers. In practice, as Okunishi for example, can only communicate with three approved persons. The Nagoya Detention House explained that the maximum number is five people but the authority can give permission to less than five people.

Besides the restriction on correspondence, the letters that the death row inmates send out are usually censored, even the letters they send to their

lawyers. Each death row inmate is only allowed to send one letter a day. Result from the censorship, one family member of a death row inmate told FIDH that the content of the letter between her and her father became more and more formal. They only exchange information in the letter, and less and less emotions are shown. As a result, if the letter was found "inappropriate" by the prison authority, parts of the content can be deleted, erased or the letter will not be transmitted to its recipient. The content of the letters between an inmate and his correspondent cannot include any mention about another person or an unrelated third party because it be seen as "inappropriate". Families and friends can send gifts or daily goods in package to the death row inmates through mails and authorized shops. Limited authorized items on a list approved by the prison authority may be sent to the inmates. FIDH saw one small grocery shop outside of the tall walls of the Tokyo Detention House. The shop is authorized by the prison and they sell only authorized items such as underwear, canned food, packed cookies.

### **Medical Care and Health**

#### **Medical and Mental Care**

There are 10 medical doctors, 8 nurses and 3 pharmacists in the Tokyo Detention Center, and regular physical checkups are provided in the facility. Upon request and with the approval of the warden, the inmates can make an appointment with the dentist or receive treatment from outside of the prison. Normally, an inmate has to wait for 6 to 12 months for the dentist. There are 2 psychiatrists but there is no mental checkup on a regular basis. Mental diagnosis is provided upon request or through the observation of the prison staff and medical personnel. The inmates are given basic health checkup such

36. Japan Federation of Bar Association, November 22, 2002, "Recommendations on the Capital Punishment System".



as X-ray checkup, blood pressure check, height and weight measurement, eyesight and hearing check, and medical consultation. In the Nagoya Detention Center, annual physical checkups are provided. As for mental checkups and treatment, the officers said to FIDH that psychiatrists are contacted only when the prison officers notice the unusual mental condition of the inmates or upon inmates' request. The FIDH delegation questions the fact that the prison guards may not be able to make correct judgments of a person's mental condition, therefore, there may be delay or neglect of mental treatment for those who are in need. A systematic psychiatric follow-up would be relevant. JFBA points out that there is a serious shortage of full time physicians at prisons so many inmates do not receive timely medical care.

### **Exercise and Hygiene**

The inmates are allowed to have 30-minute physical exercise every day except for holidays and rainy days. The exercise ground is located on the rooftops of the detention houses. There are single and multiple exercise rooms. Death row inmates and pre-trial detainees have to stay in single exercise rooms. The exercise rooms are covered with double fenced walls and ceilings, and an iron door. Pretrial and convicted inmates are subjected to the same rules as regards exercise.

In the summer, the inmates take a bath three times a week, while in the winter, twice a week. There are single and multiple bathrooms. Collective bathrooms can accommodate up to five persons. Bathing time is limited to 15 minutes, but for elderly inmates the bathing time is 20 minutes long.

### **Suicide Prevention**

The officers of the Nagoya Detention House explained the methods they use to prevent death row inmates from committing suicide:

1. to announce the execution order on the same day of the execution;

2. 24-hour closed-circuit camera surveillance system to monitor inmates' activities;
3. the existence of a "suicide prevented cell";
4. besides family members and lawyers, the death row inmates cannot receive any visitors or letters without the permission from the detention house authority, in order not to stimulate them.

### **Recreation**

Before 1997, the inmates in Tokyo Detention House were allowed to gather in one room and watch movies taped by the prison staff from TV broadcast three times a month, as FIDH mission was told by the prison staff. Since the regulation changed, the inmates are only allowed to watch movies in separate rooms. For death row inmates, they are not allowed to watch TV, but upon request they can watch taped videos. During free time, the inmates in the Nagoya Detention House can order books from a listed catalog provided by the prison library. Everyone can borrow three books at one time.

### **Complaints**

In 2006, a Board of Visitors for Inspections of Penal Institutions was established and in 2006 the board started to examine the condition in the prisons and detention houses around the country. There are 74 inspection boards for 74 prisons throughout Japan. Local bar associations can recommend one member to be on the board. The board members are appointed by the Ministry of Justice. It is essential for the board to have at least one lawyer and one physician. The other members may be professors of criminal justice, representatives of the local government, or anyone that the wardens request to be on the board. The board members are entitled to meet any inmates, that is, any inmates will have the chance to make complaints to the board members. According the information gathered, the boards can make suggestions to the detention houses and their reports are either made public or kept confidential, depending on the Board.

The establishment of the inspection board can be seen as an improvement for prison management. In some prisons, for example, after the inspection and suggestions made by the committee, the inmates can use a spoon for eating curry instead of using chopsticks; in another prison, where there was no air-conditioning and clocks in the cells, after the inspection, fans and clocks were added. However since it is a relatively new system, and the existence of the board is not well known to the inmates and their families, the evaluation of the outcome is still limited.

There are different administrative complaint procedures available to prisoners, however, all are open to abuse by the prison authorities. The first is a request for an interview with the prison warden, in case of physical abuse or moral harassment or whatever incident, but often such a request is transmitted through the very guards that are the subject of the prisoner's complaint. The same kind of complaint may occur when an inmate tries to challenge the interdiction, due to the warden's intervention, of books or letters. An answer is compulsory. Another procedure is a petition to the prison inspector officer of Minister of Justice, who visits the prison at least once a year. The petition may be submitted orally or in writing without the presence of prison staff. After the first kind of procedure, if not satisfied, the inmate can file a complaint to the Head of the regional correctional headquarters, who reviews the case. A third mechanism, in case of non satisfaction, is a confidential written petition directly to the Minister of Justice. If the Minister finds that everything is correct, he submits the decision to a panel of specialists (one panel in each region, composed by a member of JFBA, a doctor, two academics...). If the panel finds that the decision is not legal or not appropriate, a recommendation is made to the Minister who should respect it (for the last 25 years,

the Minister did not follow the panel's decision in only two cases). If the Minister finds the situation correct, the prisoner can initiate an administrative complaint to the court.

All prisoner requests are open to censorship and the mere fact that a prisoner seeks redress may often be considered as an attack on the integrity of prison and staff and an indication of a prisoner's disorderly, problematic behaviour or lack of remorse and open him to retaliation. All the requests except for request of interview with warden should be made confidentially. In fact, if the secrecy of the complaint is supposed to be granted, as soon as the head of the regional correctional headquarters answers the questions, the case becomes public. There are also three judicial procedures open to prisoners; administrative lawsuits, civil law suits against the state for compensation, and addressing complaints or accusations to the public prosecutors office. Each are difficult to access because of the lack of state legal aid, the censorship and the presence of prison officials at meetings with counsel.<sup>37</sup> The legality of these actions has been challenged in court but to no effect. Prisoners are generally prevented from appearing in court, are unable to examine witnesses, and often lose due to non-appearance. Furthermore, the courts recognize the broad discretion of the prison authorities over inmates. For these reasons it has proved very difficult for an inmate to achieve judicial remedy, as already reported in the FIDH report of 2003.

## Execution

According to Article 475 (2) of the Law on Criminal Procedure, execution takes place in the six months following the definitive condemnation to death and within five days of the execution order signed by the Minister for Justice.

37. Sentenced inmates other than death row inmates can see legal representatives in private.

The officers of the MOJ said to FIDH that before the execution, they have to examine all conditions and information to make sure that there are no possibilities and reasons to let the inmates live. Nevertheless, with cases like HAKAMADA Iwao, even though his case might be a miscarriage of justice and even if his family and lawyer found him incompetent and mentally ill at his 70s, the chance for him to be granted clemency seems very thin because the MOJ does not believe he could be innocent and his old age is not one of the conditions to take into consideration.

In 2007, the MOJ started to disclose information on the executed inmate such as the name, crime, place, date, etc. in a press conference just after the execution. Previously, only the number of persons executed was disclosed. During FIDH investigation, the officers of the MOJ and the detention houses refused to answer questions about individual death penalty cases and refused to reveal any details of the execution process. Therefore, FIDH had to find other resources to portray the practice of the execution to expose its problems.

The execution order is made by the prosecutor to the warden, and the warden to the death row inmate himself. The executions in Japan are carried out in 7 detention houses, namely, Fukuoka, Hiroshima, Miyagi, Nagoya, Osaka, Sapporo and Tokyo. Therefore, the 102<sup>38</sup> death row inmates are kept in these 7 detention houses because only these 7 have execution chambers.

FIDH delegates could not get more details and information regarding the procedure of the execution because the prison staff that the delegation interviewed were very reluctant to answer questions such as the location of the execution chamber in the detention house, the procedure of execution,

the treatment of the death row inmates before the execution, the condition and treatment of the elderly death row inmates.

A concrete and in-depth description of the execution procedure was provided by Noguchi Yoshikuni, former official of Tokyo Detention House, based on his experience in 1971. Noguchi told the FIDH delegation that at that time, the execution order was given to the death row inmate 24 hours before his execution. After the execution order was given, the inmate was moved to a separate single cell on a different floor from the other inmates. A security guard would watch him face to face for 24 hours. The time before the execution allowed the inmate enough time to ask for the last visitors and to write down his last word. The last meetings with family members or friends were held in a small room for 30 minutes or more.

The execution notification is given to the inmate 1 or 2 hours before the execution in the morning so the inmate usually does not have enough time to meet whoever he wishes to meet. The death row inmate is notified after breakfast or at the exercise ground. After he receives the notification, the warden will ask his opinions about how to deal with his personal belongings.<sup>39</sup> In order to keep his mind in peace, the inmate can spend some time to talk with the religious advisor. The inmate will then be brought to the execution chamber.<sup>40</sup> The execution chamber is usually located in a small concrete building inside the detention house.

When an execution is about to be carried out, the prosecutor, a prosecutor's assistant, the warden, the prison officers, custody chief or any authorized persons permitted by the prosecutor or the warden such as a Buddhist monk or a priest will be present at the execution. The prosecutor's assistant is responsible for writing a report with details of the execution such

38. As of September 11, 2008.

39. In practice, in the late 90's, inmates were allowed to write down their last words, but it seems not to be the case anymore.

40. 近藤昭二, August 1, 2008, 《誰も知らない「死刑」の裏側》。

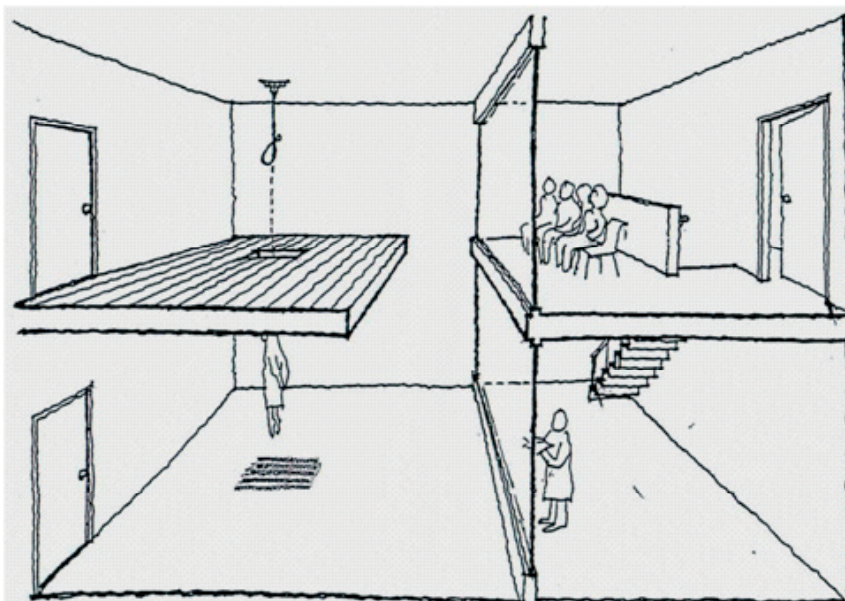
as the starting time and finish time, the process and the condition of the inmates after the execution.<sup>41</sup>

The execution chamber is a two-storey building (see pictures 2 & 3). The death row inmate will be brought into the execution chamber on the second floor. Curtains separated the entrance and the execution ground. On the entrance side, there is a Guan Yin (a Buddhist goddess) statue, which usually the inmate can pay his respect before stepping onto the execution ground. The inmate is blindfolded and handcuffed, and brought to the execution ground on the second floor. On the floor there is a square door and a rope is hanging from the ceiling. The inmate stands facing the curtains. The prosecutor, warden, and prison officers enter the execution chamber from the opposite side of the execution ground. They stand on a platform across from where the inmate stands. Between the prison staff and the inmate, there is a glass wall.

On the same side of the inmate, behind one wall there is the space for the executioners. Usually, there are three to five executioners standing on the other side of the wall behind the curtains. There are handles installed on the wall for the executioners to pull up and down the rope. When the execution time comes

and the order is given, three or five executioners pull the handles simultaneously so no one will know who actually execute the inmate. The execution takes about 1.5 hours. Five minutes after the execution, the inmate will be lowered to the basement of the chamber and be examined by the prosecutor and a medical doctor. The medical doctor will check the heartbeat of the inmate and issue a death certificate indicating the reason of death as heart failure. The rope then can be removed from the inmate after the execution. After the examination, the body will be cleaned and sent to the family in the rare cases where it claims the body. Usually the body is cremated and the family receives the ashes.

The family members of the inmates receive the notification after the execution is carried out, which is particularly harsh for them. This procedure draws a lot of criticism and the United Nations Human Rights Committee has made several recommendations to the Japanese government, but those recommendations have not been implemented so far.<sup>42</sup> The last minute notification to the death row inmates and post-mortem notification to family members may deprive the inmates of the possibility to seek retrials, suspension of execution or petition for clemency.

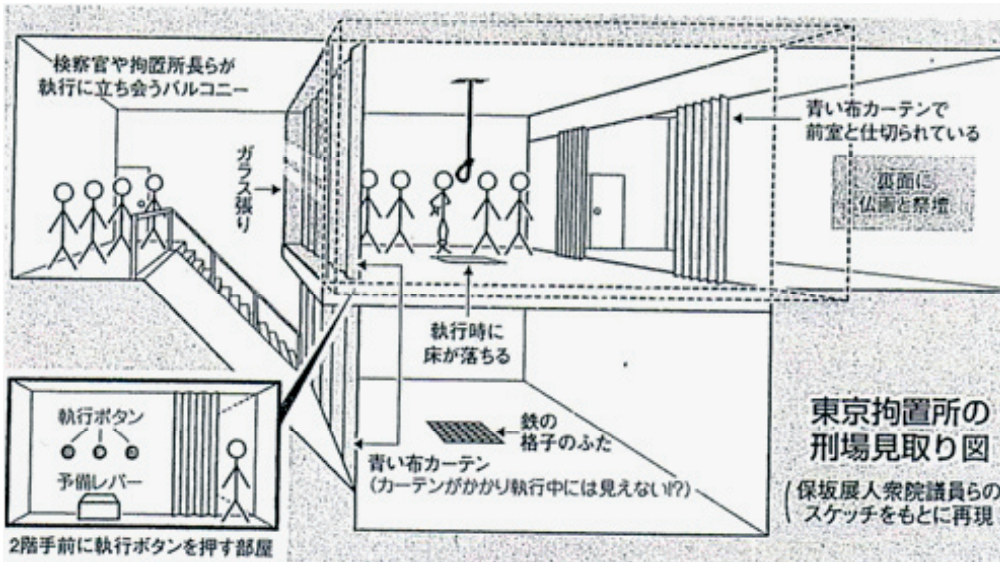


Execution Chamber

41. 近藤昭二, August 1, 2008, 《誰も知らない「死刑」の裏側》。

42. CCPR/C/79/Add.28, 5 November 1993; CCPR/C/79/Add.102, 19 November 1998, para. 21.





Execution Chamber at Tokyo Detention House



HAKAMADA Iwao at his youth

### Case study: Hakamada

HAKAMADA Iwao (袴田巖, born on March 10, 1936) was formerly a professional boxer in Japan. He was accused of murder, arson and robbery, and was sentenced to death. At the time Hakamada was arrested, he was 30 years old and he is now 72.

On June 30, 1966, a miso manufactory in Shizuoka was set on fire. The executive of the miso manufactory, his wife and two children were found stabbed to death and ¥200,000 were stolen. Two months later, Hakamada was arrested and charged with murder, arson and robbery based on his confession drawn under police custody; Hakamada later claimed that he had been tortured under long interrogation. Some tiny blood stains were found on Hakamada's pyjama and the smell of petrol oil was also found. The cloth with the blood stains was sent for examination by the police research institute. The scientists told the police that the blood stain was not sufficient for examination so it could not be presented as hard evidence. Therefore, the prosecutor presented another pair of blood-soaked pants found in a miso tank in August, 1967 and claimed that Hakamada had been wearing them during the crime. However, the pants did not fit Hakamada at all and because the pants had been soaked in the miso tank for some days, no DNA evidence could be found from the clothes. Hakamada's lawyers initiated a petition to fight against what they considered as fabricated evidence, but the prosecutor replied that unless the lawyers could prove who, how and why the clothes were found in the miso tank, the clothes should be seen as hard evidence.



Aside from the blood-stained pants, the only evidence the police held was Hakamada's confession under police custody which was believed to be obtained under torture because Hakamada was detained in the police station for 23 days before being indicted and had been through at least 20 hours of interrogation. Under police custody, Hakamada had received only three visits by his lawyers.

Hakamada had made a confession under police interrogation but he pleaded innocent in court and afterwards. On September 11, 1968, Hakamada was sentenced to death by the Shizuoka District Court, a decision upheld later by the Tokyo High Court and the Supreme Court in 1980. Hakamada filed an appeal for retrial in 1981 and the appeal was rejected by the Shizuoka District Court in 1994, a decision upheld by the Tokyo High Court in 2004 and then the Supreme Court on March 24, 2008. The second appeal filed by Hakamada's lawyers was sent out on April 25, 2008.

Kumamoto Norimichi was one of three judges who handled Hakamada's case 40 years ago at the district court. He told the public in 2007 that he always believed Hakamada is innocent. Mumamoto said, in 1968, before the judges handed down the death sentence of Hakamada, he argued for acquittal but was outvoted by two other senior judges.<sup>43</sup>

When Hakamada's death sentence was finalized in 1980, he was moved to the death row and began to act strangely. His sister said he used to have good spirits and be very encouraging to others. After so many years detained in an individual cell, Hakamada was found mentally disturbed and incompetent and he started to refuse visitors. He did not receive any mental treatment until now. He could not recognize his family members and lawyers and he refused to meet with anyone. Under the assistance of Diet members of the Legal Committee, the family members met him a few times but now he refuses any visits from his family. On November 27, 2007, he lastly met with his sister and on December 11, 2007, he received visitors from the boxer association.

Since Hakamada is incompetent, his sister HAKAMADA Hideko has to file an appeal for him. Mental treatment for Hakamada was proposed to the Ministry of Justice by his lawyers, but the proposal was rejected. As of 2008, Hakamada has been in prison for 42 years, the longest imprisonment among current Japanese death row prisoners.

43. The Japan Times, May 9, 2008, "On death row and a cause celebre".

# Conclusion

The FIDH mission was able to confirm that the conditions of detention of death row prisoners have slightly improved over recent years, with the entry into force of a new law regulating prisons in 2006 (amended in 2007 to include death row prisoners and pre-trial inmates in its scope). This legislation seems to have brought transparency to the previously unwritten rules which saw visits depend on the goodwill of the Prison Director. Effective since 2006, each detention centre now includes a Board of Inspectors, with the authority to visit detention centres.

However, the number of executions is on the rise. Since 1993, 76 detainees have been hanged. In 2005, 1 person has been executed. In 2006, 4 persons; in 2007, 9 persons. By September 2008, already 13 persons have been executed. Altogether, Japan's detention centres currently hold 102 detainees condemned to death (they were 77 in 2005).

Legal provisions in force in Japan authorise detention (*Daiyo kangoku*) justifiable by the needs of the enquiry and before any judicial decision is made. In the case of individuals faced with serious presumptions of guilt, detention lasts several weeks. While this detention is theoretically in prison, it is in reality often carried out in police stations. During the approximate 20 day period, suspected persons, unaware of the accusations against them and without access to evidence of presumptions made against them remain under the discretionary control of police forces. Everything is performed during the detention within police stations with the goal of obtaining from the suspects confessions for crimes, and lawyers are not allowed to be present at the interrogation. Reforms made up to now have not addressed adequately those concerns.

There is no equality of the arms between the accused and the prosecution, the prosecutor having

no obligation to transmit information favourable to the accused to his/her lawyers. The reform which will enter into force in December 2008, whereby the victims will sit with the prosecutor and be able to question the accused as well as witnesses, will have no impact on the right of victims to compensation. In addition, FIDH fears that this reform may further strengthen the inequality between the parties to the trial.

The appeal is not mandatory and the law does not guarantee that a retrial or a clemency application suspend the procedure of execution. The provision establishing that mentally ill people cannot be punished under criminal law seems poorly applied in practice.

Last but not least, a reform entering into force before the end of 2008 will include lay judges in criminal trials, and a pre-trial meeting where the presence of the accused will be optional. FIDH fears that this may give rise to a higher number of condemnations to death because of the lack of training and sensitization of the lay judges, in a context of increasing repressive policies. In addition, this raises fears that speedy trials may be to the detriment of fair justice.

Secrecy surrounding executions is also a cause of concern. The prisoner's relatives often learn the execution after it has been carried out. The press conference held by the Ministry of Justice just after the execution is a progress in the right direction since the name of the executed and a brief description of the crime are provided to the public. However, it also makes the death penalty part of daily life, and an acceptable practice to all. Medical and psychological support for death row prisoners is largely insufficient.

# Recommendations

## A. To the Government and Japanese legislators

1. Adopt a moratorium on convictions to death and on all executions, with the final aim of complete abolition.

### In the meantime:

2. Reduce the number of crimes punishable by the death penalty so that capital punishment be applied to only the most serious crimes.

3. Implement the basic democratic principle of separation of powers, by separating more clearly the relations between the Ministry of Justice, the Supreme Court, Prosecution and the media.

4. Abolish the system of *Daiyo Kangoku* and reform the custody system at police stations, by dramatically reducing the length of custodial detention and placing detainees under judicial authority with the provision for full-fledged rights of the defence (obligatory presence of a lawyer, and obligatory recording of interviews).

5. Ensure that those charged with crimes attracting the death penalty benefit from total lawyer-client confidentiality, from the moment of arrest until the final stage, including as regards correspondence.

6. Establish in law, and not through Supreme Court regulations, all details of the prejudgment stage, in order to avoid future problems.

7. Ensure that all parties have all information concerning them made available to them, meaning that Prosecutors must not be able to withhold information favourable to the accused.

8. Effectively recognise the right of victims to civil reparations so as to prevent the perception that the death penalty is the only compensation, being the only means at their disposition.

9. Re-evaluate the need for and risks of the presence of victims' families alongside the Prosecutor, which represents an adoption of the inquisitorial judicial model standards in what is, however, an adversarial model.

10. Rebalance the system of deliberation by jury by introducing a rule requiring a unanimous decision.

11. Institute mandatory appeal procedures for all cases involving capital punishment.

12. Guarantee in law that executions will not take place while a retrial or request for pardon is pending, and thus ensure that retrial serves to suspend execution.

13. Continue to improve, with the formation of the Board of Inspectors in 2005, the possibility of informing the Japanese public of conditions of detention on death row, notably by allowing Parliamentarians, journalists, and representatives of international organisations to visit death row, so that they may witness conditions of detention and gather detainees' complaints.

14. Guarantee the physical and mental health of detainees with the aid of more regular checkups, performed not only upon the detainee's request. Particular attention must be paid to mental health, which should be monitored more than simply at the moment of execution and should not serve as a pretext to reduce detainees' rights.

15. There should not be limitations on number and persons of visitors to the death row inmates. The death row inmates should be able to send and receive letters and information more freely.

16. End the practice of secrecy surrounding the death penalty (in particular, concerning all aspects of the post-conviction stage: that is, conditions of detention and of execution).

17. Intensify and improve international human rights training of judges, lawyers, police and detention centre staff.

18. Ensure psychological supervision is provided to detention centre staff in contact with those sentenced to death.

19. End the apparent Government media strategy of tendential analysis and organize instead awareness-raising campaigns that represent all sides of the debate, including:

- a. the real nature of public opinion, particularly that of victims' families (as not all support the death penalty),
- b. the limited effectiveness of capital punishment in preventing crimes (as a part of which pre-existing and reliable information should be provided), instead of basing arguments on ill-informed surveys of public opinion, managed by an over-paternalistic Government;
- c. international human rights norms

These recommendations are even more pressing given that Japan will soon introduce a lay-judges system. Such a system should be suspended until balanced and efficient conditions have been assured.

20. Implement the recommendations issued by the United Nations Council on Human Rights in the framework of the Universal Periodic Review and the recommendations of the United Nations Committee Against Torture and Human Rights Committee.

21. Sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

## **B. To the Council of Europe and to the European Union**

1. To the Council of Europe, considering that Japan has not responded to the Council's requests over several years, to act on its threat of suspension. Where the suspension is not performed, the Council will be severely discredited.

2. To include systematically the question of the death penalty in their dialogue with Japan, and at all levels (including meetings of the Troika and of the Council and of the EU Commission with their counterparts, meetings between European Parliamentarians or members of the Parliamentary Assembly of the Council of Europe with their Japanese counterparts, etc), based on the European Union's Guidelines on the death penalty of 1998.

3. Support, while recognising Japan's improvements in other human rights fields, initiatives taken in Japan that aim to educate and raise awareness among the legal profession, the media and the public on international human rights norms, international criminal law and on the proven inability of the death penalty to dissuade the commission of crimes.

# Annex 1: Persons met by the mission

## 1. Ministry of Justice

- Satoshi TOMIYAMA, Director of the Penitentiary Division
- Norio SAEKI, Assistant Director of the Penitentiary Division
- Shin KUKIMOTO, Office of Criminal Affairs, Division of General Affairs, Director of the Research and Planning office
- Yasushi IIJIMA
- Daisuke KATSURA

## 2. Community actors

- Amnesty International Japan, Mariko FUJITA (member of the executive bureau) ; Ryosuke MATSUURA (campaign officer abolition of the death penalty), Ryo KACHI.
- Center for Prisoner's Rights (CPR), Emi AKIYAMA, Yoshiaki NAKAMOTO
- Soba no Kai : Jin NAGAI. Hidefusa SEKI
- Masaharu HARADA, President of Ocean
- Forum 90 : Taku FUKADA, Naoko SHIMAYA, Akiko TAKADA
- Hidako HAKAMADA, sister of Monsieur Hakamada, condemned to death

## 3. Lawyers

- Kazuhiro YAEGASHI
- Katsuhiko NISHIJIMA (a lawyer representing Hakamada)
- Yuichi KAIDO, Vice-President of CPR
- Yoshikuni NOGUCHI, (Former Official of Tokyo Detention Center)
- Takahiro YUYAMA, JFBA
- Kei SHINYA, (Member of the JFBA Moratorium Implementation Committee)
- Maiko TAGUSARI, JFBA
- Mitsuhiro MURAKAMI (Nagoya Bar, Okunishi's lawyer)
- Mizaki TORII, staff of JFBA
- Kiyoshi HIRAMATSU (Nagoya Bar, Okunishi's lawyer)
- Takeshige MURATA (Nagoya Bar, Okunishi's lawyer)

## 4. Professors

- Osamu NIIKURA, Professor at Aoyama Gakuin University, Tokyo

## 5. Diplomats

- Christophe PENOT, Councillor Minister
- Emmanuel BESNIER, First Secretary
- Pauline CARMONA, Political Adviser



## **6. Detention personnel at the Tokyo and Nagoya prisons**

Tokyo :

ISHIHARA Junichi (Warden)

YOKOYAMA Kazuhiro

TOMINAGA Hisayoshi

ISHIHARA Junichi

Nagoya :

SHIMADA Yoshio (warden)

YAMAZAKI Ikuo (general affairs)

MAEDA Toshiaki (deputy)

## **7. Parliamentarians**

-Katsuei HIRASAWA, House of Representatives, Liberal Democratic Party

-Mizuho FUKUSHIMA, PSD (Social Democratic Party)

-Nobuto HOSAKA, PSD

## **8. Journalists**

-Susumu YAMAGUCHI (Asahi Shimbun)

-Miako ICHIKAWA (Asahi Shimbun)

-Fumio TANAKA (Yomiuri Shimbun)

## **9. Religious representatives**

Rev. Kitani HIDEFUMI, National Christian Council in Japan

**Families of the condemned and judges met by the mission requested that their names not be cited in this report.**

## Annex 2: References

Guide to Tokyo Detention House

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Another Japan is possible (ed. J Chan), Stanford University press, 2008.

Nagai Jin, “The Death Penalty -the Current Status in Japan. Gratuitous appeals to “Japanese Culture””, *Japonesia Review*, n° 4 2007-08, p. 68 et s.

NIIKURA Osamu, “L’expérience de l’Europe face à la question de l’abolition de la peine de mort”, Conférence prononcée le 26 octobre 2006 à la Maison franco-japonaise, reprise en japonais dans *NICHIFUTSU BUNKA*, n° 75, mars 2008, p. 1 et s.

Film entitled “I just didn’t do it”, by Soredemo boku wa yattenai, produced by JFBA

# Annex 3: Persons condemned to death since 1973

Source: <http://www.geocities.jp/waramoon2000/sikkou1993.html>

死刑被執行者一覧（1973年3月以来）

基本的に共犯は同日に執行される。

\*印は共犯

Execution date	Name	Age	Detention Center	Date of crime	crime	No. of victim	Decision of District court	Decision of High Court	Decision of Supreme Court	Notes
1993.3.26	Seikichi KONDO	55	Sendai	1970.7-1971.5	Murder on the occasion of robbery	2	1974.3.29 Shirakawa Branch, Fukushima District Court Sentence of Death	1977.6.28 Sendai Appeal dismissed	1980.4.25 Appeal dismissed	
	Shujiro TATSUKAWA	62	Osaka	1971.1-1972.7	Murder	2	1976.2.18 Matsuyama Sentence of Death	1979.12.18 Takamatsu Appeal dismissed	1981.6.26 Appeal dismissed	
	Tetsuo KAWANAKA	48	Osaka	1975.4-1977.8	Murder on the occasion of robbery	3	1980.9.13 Kobe Sentence of Death	1982.5.26 Osaka Appeal dismissed	1984.9.13 Appeal dismissed	
1993.11.26	Tadao KOJIMA	61	Sapporo	1974.8.7	Murder on the occasion of robbery	3	1975.9.17 Kushiro Sentence of Death	1977.8.23 Appeal dismissed	1981.3.19 Appeal dismissed	former name 'SAITO' With previous Conviction of Life imprisonment
	Yukio SEKI		Tokyo	1977.12.3	Murder on the occasion of robbery	1	1979.5.17 Tokyo Sentence of Death	1982.9.1 Tokyo Appeal dismissed	No appeal to the Supreme Court	
	Hideao DEGUCHI	70	Osaka	1974.7-10	Murder	2	1978.2.23 Osaka Sentence of Death	1980.11.28 Osaka Appeal dismissed	1984.4.27 Appeal dismissed	
	Toru SAKAGUCHI	57								

Execution date	Name	Age	Detention Center	Date of crime	crime	No. of victim	Decision of District court	Decision of High Court	Decision of Supreme Court	Notes
1994.12.1	Yukio AJIMA	44	Tokyo	1977.4.16	Murder	3	1978.3.8 Maebashi Sentence of Death	1980.2.20 Tokyo Appeal dismissed	1985.4.26 Appeal dismissed	Former name 'KOYAMA'
	Kazuzo SASAKI	66	Sendai	1984.9.9	Murder on the occasion of robbery	2	1985.6.17 Aomori Sentence of Death	No Appeal to the High Court		
1995.5.26	Eiji FUJIOKA		Osaka	1978.11-12	Murder on the occasion of robbery	2	1983.4.14 Tokushima Sentence of Death	No Appeal to the High Court		
	Fusao SUDA	54	Tokyo	1986.5.9	Murder	1	1986.12.22 Tokyo Sentence of Death	Appeal withdrawn		
	Shigeo TANAKA	70	Tokyo	1976.10.16	Murder on the occasion of robbery	1	1977.11.18 Hachioji Branch, Tokyo Sentence of Death	1981.7.7 Tokyo Appeal dismissed	1987.10.23 Appeal dismissed	Former name 'KOYAKE'
1995.12.21	Shuji KIMURA	45	Nagoya	1980.12.2	Murder	1	1982.3.23 Nagoya Sentence of Death	1983.1.26 Nagoya Appeal dismissed	1987.7.9 Appeal dismissed	
	Naoto HIRATA	63	Fukuoka	1979.3.28-5.15	Murder on the occasion of robbery	2	1980.10.2 Kumamoto Sentence of Death	1982.4.27 Fukuoka Appeal dismissed	1987.12.18 Appeal dismissed	
	Tokujiro SHINOHARA	68	Tokyo	1981.10-82.7	Murder	2	1983.12.26 Maebashi Sentence of Death	1985.1.17 Tokyo Appeal dismissed	1988.5.20 Appeal dismissed	With previous Conviction of Life imprisonment

Execution date	Name	Age	Detention Center	Date of crime	crime	No. of victim	Decision of District court	Decision of High Court	Decision of Supreme Court	Notes
1996.7.11	Yoshiaki SUGIMOTO	49	Fukuoka	1979.11.4	Murder on the occasion of robbery	1	1982.3.16 Kokura Branch, Fukuoka Sentence of Death	1984.3.14 Fukuoka Appeal dismissed	1988.4.15 Appeal dismissed	
	Kazumi YOKOYAMA	43								
	Mikio ISHIDA	48	Tokyo	1981.7.6	Murder on the occasion of robbery	2	1982.12.7 Tokyo Sentence of Death	1984.3.15 Appeal dismissed	1988.7.1 Appeal dismissed	
1996.12.20	Yoshihito IMAI		Tokyo	1983.1.29	Murder on the occasion of robbery	3	1984.6.5 Tokyo Sentence of Death	1985.11.29 Tokyo Appeal dismissed	1988.10.27 Appeal Withdrawn	
	Mitsunari HIRATA		Tokyo	1978.5-6	Murder on the occasion of robbery	2	1980.1.18 Tokyo Sentence of Death	1982.1.21 Appeal dismissed	1988.10.22 Appeal withdrawn	
	Satoru NOGUCHI	50							1990.2.1 Appeal dismissed	



Execution date	Name	Age	Detention Center	Date of crime	crime	No. of victim	Decision of District court	Decision of High Court	Decision of Supreme Court	Notes
1997.8.1	Nobuko HIDAHA		Sapporo	1984.5.5	Murder	6	1987.3.9 Sapporo Sentence of Death	1988.10.11 Appeal withdrawn		Wife of Yasumasa
							1986.5.20 Urawa Sentence of Death	1988.10.13 Appeal withdrawn	1989.11.20 Appeal dismissed	Husband of Nobuko
	Hideki KANDA	43	Tokyo	1985.3.8	Murder	3	1979.7.10 Tokyo Sentence of Death	1986.12.22 Tokyo Appeal dismissed	1983.7.8 Reversed and re-ferred back to High Court	19 years
							1985.7.8 Tokyo Sentence of Death	1981.8.21 Tokyo Life imprisonment	1990.4.17 Appeal dismissed	Old at the time Of crime
1998.6.25	Masahiro MURATAKE	54	Fukuoka	1978.3.21	Murder on the occasion of robbery	3	1983.3.30 Sasebo Branch, Nagasaki Life imprisonment	1985.10.18 Fukuoka Sentence of death	1990.4.27 Appeal dismissed	
							1981.7.14 Kokura Branch, Fukuoka	1986.12.2 Fukuoka Appeal dismissed	1991.2.5 Appeal dismissed	With previous Conviction of Life imprisonment
	Yukihisa TAKEYASU	66	Fukuoka	1980.7.24	Murder on the occasion of robbery	1	1984.1.23 Tokyo Sentence of Death	1985.7.8 Tokyo Appeal dismissed		With previous Conviction of Life imprisonment
							1983.1.16 Tokyo Sentence of Death	1991.2.5 Appeal dismissed		With previous Conviction of Life imprisonment

Execution date	Name	Age	Detention Center	Date of crime	crime	No. of victim	Decision of District court	Decision of High Court	Decision of Supreme Court	Notes
1998.11.19	Masamichi IDA	56	Nagoya	1979.11-83.12	Murder	3	1985.12.2 Nagoya Sentence of Death	1987.3.31 Nagoya Appeal dismissed	No appeal to the Supreme Court	Accomplice Of Toshihiko HASEGAWA
	Tatsuaki NISHIO	61	Nagoya	1977.1.7	Murder	1	1980.7.8 Nagoya Sentence of Death	1981.9.10 Nagoya Appeal dismissed	1989.3.28 Appeal dismissed	
	Akira TSUDA	59	Hiroshima	1984.2.13	Murder	1	1985.7.17 Fukuyama Branch, Hiroshima Sentence of Death	1986.10.21 Hiroshima Appeal dismissed	1991.6.11 Appeal dismissed	
1999.9.10	Shinji SATO	62	Tokyo	1979.7.28	Murder	1	1981.3.16 Tokyo Sentence of death	1985.9.17 Tokyo Appeal dismissed	1992.2.18 Appeal dismissed	With previous Conviction of Life imprisonment
	Katsutoshi TAKADA	61	Sendai	1990.5.2	Murder on the occasion of robbery	1	1992.6.18 Koriyama Branch, Fukushima Sentence of Death	No appeal to the High Court		With previous Conviction of Life imprisonment
	Tetsuyuki MORIKAWA	69	Fukuoka	1985.7.24	Murder on the occasion of robbery	2	1986.8.5 Kumamoto Sentence of Death	1987.6.22 Fukuoka Appeal dismissed	1992.9.24 Appeal dismissed	With previous Conviction of Life imprisonment
1999.12.17	Teruo ONO	62	Fukuoka	1977.9.24	Murder on the occasion of robbery	1	1978.9.18 Nagasaki Sentence of Death	1979.9.25 Fukuoka Appeal dismissed	1981.6.16 Appeal dismissed	With previous Conviction of Murder
	Kazuo SAGAWA	48	Tokyo	1981.4.4	Murder on the occasion of robbery	2	1982.3.30 Urawa Sentence of Death	1987.6.23 Tokyo Appeal dismissed	1991.11.29 Appeal dismissed	

Execution date	Name	Age	Detention Center	Date of crime	crime	No. of victim	Decision of District court	Decision of High Court	Decision of Supreme Court	Notes
2000.11.30	Kiyotaka FUJIWARA	52	Nagoya	1972.9-82.11	Murder on the occasion of robbery	8	1986.3.24 Nagoya	1988.5.19 Nagoya	1994.1.17 Appeal	Former name 'KATSUTA'
	Takashi MIYAWAKI	57	Nagoya	1989.2.14		3	Sentence of Death 1989.12.14 Gifu	Appeal dismissed 1990.7.16 Nagoya	dismissed 1994.3.18 Appeal	
	Kunikatsu OISHI	55	Fukuoka	1982.5.16	Murder	3	Sentence of Death 1987.3.12 Saga	Appeal dismissed 1989.10.24 Fukuoka	withdrawn 1995.4.21 Appeal	
2001.12.27	Toshiniko HASEGAWA	51	Nagoya	1979.11-84.4	Murder	3	1985.12.2 Nagoya	1987.3.31 Nagoya	1993.9.21 Appeal	Former name 'TAKEUCHI' Accomplice of Masamichi IDA
	Kojiro ASAKURA	66	Tokyo	1983.6.17	Murder	5	1985.12.20 Tokyo	Appeal dismissed 1990.1.23 Tokyo	dismissed 1996.11.14 Appeal	
2002.9.18	Tatsuya HARUTA	36	Fukuoka	1987.9.14-25	Murder	1	1988.2.26 Kumamoto	1991.3.26 Fukuoka	1998.4.23 Appeal	Former name 'TAMOTO' With previous Conviction of Murder
	Yoshiteru HAMADA		Nagoya	1994.6.3	Murder	3	Sentence of Death 1998.5.15 Gifu	Appeal dismissed 1998.6.3 Appeal withdrawn	dismissed	

Execution date	Name	Age	Detention Center	Date of crime	crime	No. of victim	Decision of District court	Decision of High Court	Decision of Supreme Court	Notes
2003.9.12	Shinji MUKAI	42	Osaka	1985.11-12	Murder on the occasion of robbery	3	1988.2.26 Kobe Sentence of Death	1990.10.3 Osaka Appeal dismissed	1996.12.17 Appeal dismissed	Former name 'MAEHARA'
2004.9.14	Sueo SHIMAZAKI Mamoru YOSHIOKA	59 40	Fukuoka Osaka	1988.3.13-5.17 2001.6.8	Murder Murder	3 8	1992.11.30 Kumamoto Life imprisonment 2003.8.28 Osaka Sentence of Death	1995.3.16 Fukuoka Sentence of death 2003.9.26 Appeal withdrawn	1999.3.9 Appeal dismissed	Former name 'TAKUMA'
2005.9.16	Susumu KITAGAWA	58	Osaka	1983.8-89.2	Murder on the occasion of robbery	2	1994.2.23 Kochi Sentence of Death	1995.3.30 Takamatsu Appeal dismissed	2000.2.4 Appeal dismissed	
2006.12.25	Yoshimitsu AKIYAMA Yoshio FUJINAMI Michio FUKUOKA Hiroaki HIDAOKA	77 75 64 44	Tokyo Tokyo Osaka Hiroshima	1975.8.25 1981.3.29 1978.12.8-81.1.30 1996.4.19-9.14	Murder on the occasion of robbery Murder on the occasion of robbery Murder	1 2 3 4	1976.12.16 Tokyo Sentence of Death 1982.2.19 Utsunomiya Sentence of Death 1988.3.9 Kochi Sentence of Death 2000.2.9 Hiroshima Sentence of Death	1980.3.27 Tokyo Appeal dismissed 1987.11.11 Tokyo Appeal dismissed 1994.3.8 Takamatsu Appeal dismissed No appeal to the High Court	1987.7.17 Appeal dismissed 1993.9.9 Appeal dismissed 1999.6.25 Appeal dismissed	

Execution date	Name	Age	Detention Center	Date of crime	crime	No. of victim	Decision of District court	Decision of High Court	Decision of Supreme Court	Notes
2007.4.27	Kosaku NADA	56	Osaka	1983.1.19	Murder on the occasion of robbery	2	1984.7.10 Kobe Sentence of Death	1987.1.23 Osaka Appeal dismissed	1992.9.29 Appeal dismissed	
	Yoshikatsu ODA		Fukuoka	1990.12.15	Murder	2	2000.3.15 Fukuoka Sentence of Death	2000.3.30 Appeal withdrawn		
	Masahiro TANAKA	42	Tokyo	1984.11.15- 91.3.8	Murder on the occasion of robbery	4	1994.1.27 Yokohama Sentence of Death	1995.12.20 Tokyo Appeal dismissed	2000.9.8 Appeal dismissed	Former name 'MIYASHITA'
2007.8.23	Hifumi TAKEZAWA		Tokyo	1990.9.13- 93.7.28	Murder	3	1998.3.24 Utsunomiya Sentence of Death	2000.12.11 Tokyo Appeal dismissed	No appeal to the Supreme Court	
	Kozo SEGAWA	60	Nagoya	1991.5.7	Murder on the occasion of robbery	2	1993.7.15 Toyama Sentence of Death	1997.3.11 Kanazawa Branch, Nagoya Appeal dismissed	2001.1.30 Appeal dismissed	
	Yoshio IWAMOTO	63	Tokyo	1996.6.10- 99.7.8	Murder on the occasion of robbery	2	2001.2.1 Tokyo Sentence of Death	No appeal to the High Court		



Execution date	Name	Age	Detention Center	Date of crime	crime	No. of victim	Decision of District court	Decision of High Court	Decision of Supreme Court	Notes
2007.12.7	Noboru IKEMOTO	74	Osaka	1986.6.3	Murder	3	1988.3.22 Tokushima Life imprisonment	1989.11.28 Takamatsu Sentence of death	1996.3.4 Appeal dismissed	
							2001.3.21 Tokyo Sentence of Death	2001.12.19 Tokyo Appeal dismissed	2003.1.5 Appeal withdrawn	
							1988.3.10 Yokohama Sentence of Death	2000.1.24 Tokyo Appeal dismissed	2004.6.15 Appeal dismissed	
2008.2.1	Masahiko MATSUBARA	63	Osaka	1988.4.18-6.1	Murder on the occasion of robbery	2	1990.5.22 Tokushima Sentence of Death	1992.1.23 Takamatsu Appeal dismissed	1997.4.28 Appeal dismissed	
							2004.6.18 Kagoshima Sentence of Death	2000.2.28 Tokyo Sentence of death	2004.10.13 Appeal dismissed	With previous Conviction of Murder (10 years Imprisonment)
							1999.5.27 Tokyo Life imprisonment			
	Keishi NAGO		Fukuoka	2002.8.16	Murder	2				
	Takashi MOCHIDA	65	Tokyo	1997.4.18	Murder	1				

Execution date	Name	Age	Detention Center	Date of crime	crime	No. of victim	Decision of District court	Decision of High Court	Decision of Supreme Court	Notes
2008.4.10	Katsuyoshi NAKAMOTO	64	Osaka	1982.5.20	Murder on the occasion of robbery	2	1985.5.16 Sakai Branch, Osaka Sentence of Death	1991.10.27 Osaka Appeal dismissed	1997.1.28 Appeal dismissed	
	Masaharu NAKAMURA	61	Osaka	1989.10.10- 12.26	Murder on the occasion of robbery	2	1995.5.19 Otsu Sentence of Death	1999.12.22 Osaka Appeal dismissed	2004.9.9 Appeal dismissed	
	Masato SAKAMOTO	41	Tokyo	2002.7.19	Murder	1	2003.10.9 Maebashi Life imprisonment	2004.10.29 Sentence of death	No appeal to the Supreme Court	
2008.6.17	Kaoru AKINAGA	61	Tokyo	1989.10.1-10.4	Murder	2	1999.3.11 Tokyo Life imprisonment	2001.5.17 Tokyo Sentence of death	2005.3.3 Appeal dismissed	Former name 'OKASHITA'
	Yoshio YAMAZAKI	73	Osaka	1985.11.12- 90.3.24	Murder	2	1997.2.18 Takamatsu Life imprisonment	2000.10.26 Takamatsu Sentence of death	2005.1.25 Appeal dismissed	
	Shinji MUTSUDA	37	Tokyo	1995.12.21	Murder on the occasion of robbery	2	1998.6.5 Tokyo Sentence of Death	2001.9.11 Tokyo Appeal dismissed	2005.10.17 Appeal dismissed	
2008.6.17	Tsutomu MIYAZAKI	45	Tokyo	1988.8.22- 89.6.6	Murder	4	1997.4.14 Tokyo Sentence of Death	2001.6.28 Tokyo Appeal dismissed	2006.1.17 Appeal dismissed	

Execution date	Name	Age	Detention Center	Date of crime	crime	No. of victim	Decision of District court	Decision of High Court	Decision of Supreme Court	Notes
2008.9.11	Yoshiyuki MANTANI	68	Osaka	1988.1.15	Murder on the occasion of robbery	1	1991.2.7 Osaka	1997.4.10 Osaka Appeal dismissed	2001.12.6 Appeal dismissed	With previous Conviction of Life imprisonment
	Mineteru YAMAMOTO		Osaka	2004.7.22	Murder on the occasion of robbery	2	2006.3.20 Kobe Sentence of Death	No appeal to the High Court		
	Isamu HIRANO	61	Tokyo	1994.12.19	Murder on the occasion of robbery	2	2000.2.17 Utsunomiya Sentence of Death	2002.7.4 Tokyo Appeal dismissed	2006.9.1 Appeal dismissed	With previous Conviction of Murder

# Annex 4: Recommendations issued by FIDH in its May 2003 report entitled “The Death Penalty in Japan: A Practice Unworthy of a Democracy”

## A. to the Japanese government and legislator

1 - To adopt a moratorium on executions of the capital punishment, with as final aim its abolition. And at the very least, to reduce the number of crimes punished by the death penalty in order to ensure that it is applied only for the most serious crimes. Such a legislative modification should be applied immediately to the persons who have been condemned on the base of that modified legislation (in conformity with Principle 2 of the UN Safeguards).

2 - To reform the system of police custody in police stations by drastically reducing the period of time suspects are held; by putting the system under the effective control of the judicial authority; and by fully ensuring true exercise of rights of the defence. Confessions under police custody are the cause of many miscarriages of justice.

3 - To institute a mandatory appeal procedure for all death sentence rulings and to guarantee in the legislation that executions cannot be carried out while appeals for retrials and requests of pardon are pending.

4 - To put an end to the secrecy surrounding death row inmates' living conditions in Japanese detention houses and allow Diet members, journalists and representatives from international organizations to visit them, observe their living conditions and collect grievances so as to

inform the public opinion in Japan and internationally. Properly informed, public opinion would probably be in favour of a moratorium on executions, which would be a first step towards the abolition of the death penalty.

5 - To ensure that persons who risk to be condemned to the death penalty from the moment of the arrest and at any stage of the procedure, even after the sentence have become definitive, have access to a legal counsel, in full respect of the confidentiality of the lawyer-client relationship.

6 - Organise campaigns of sensitisation for the public on international human rights standards and on the limited efficacy of the death penalty in deterring crime, rather than invoking questionable opinion «polls» as the basis for retention of the death penalty. This has been repeatedly called for by domestic human rights NGOs, and recommended by the United Nations Human Rights Committee.

7 - Increase and improve training for judges, prosecutors and law enforcement officers in international human rights law.

8 - Report to the UN Human Rights Committee on specific steps and measures taken to address its recommendations in past reviews of the government of Japan's State Parties reports; submit to the UN Committee Against Torture its initial report under the Convention, due since July 2000.

9 - Ratify the Second Optional Protocol to the ICCPR aiming at the universal abolition of the death penalty.

10 - Ratify the Statute of the International Criminal Court

## B. to the Council of Europe and the European Union

1 - To the Council of Europe, considering that over the last 2 years, Japan has not reacted effectively to the calls of the Council of Europe, to take into

consideration the suspension of the observer status for a renewable period of 1 year, and to propose the development, in Japan, of specific programs aiming at promoting abolition.

2. To systematically include the issue of death penalty in their dialogue with Japan, at all levels (meetings of the troika of the EU Council and the Commission with their counterparts, meeting with Members of the European Parliament or members of the Parliamentary Assembly of the Council of Europe and their Japanese counterparts, etc.)

3 - To support initiatives in Japan which aim at training and sensitizing legal practitioners and the public to international human rights standards, to international criminal law, to the lack of demonstrated efficiency of the death penalty.





# FIDH represents 155 human rights organisations on 5 continents

keep your eyes open

## Establishing the facts:

### investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

## Supporting civil society:

### training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

## Mobilising the international community:

### permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

## Informing and reporting:

### mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any such discrimination. Article 8: the right to an effective remedy

## About FIDH

- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.
- A broad mandate  
FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.
- An universal movement  
FIDH was established in 1922, and today unites 155 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.
- An independent organisation  
Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.